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91-2015

Supreme Court, U.S.
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No. _____

In The
Supreme Court of the United States
October Term, 1991

F. JOSEPH LOEPER, ROBERT C. JUBELIRER, D. MICHAEL FISHER, CHARLES LEMMOND, HANK SALVATORE NOAH WENGER AND MATTHEW RYAN
Petitioners,

v.

BRENDA K. MITCHELL, Secretary of the Commonwealth, and WILLIAM BOEHM, Commissioner of the Bureau of Commission, Elections, and Legislation, Department of State, et al.
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

APPENDIX

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ORDERS, OPINIONS AND RULINGS

J-57-1992

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

ROBERT J. MELLOW, Senator, 22nd District, J. WILLIAM LINCOLN, Senato,r 32nd District, LEONARD J. BODACK, Senator, 38th District, MICHAEL J. O'PAKE, Senator, 11th District, PATRICK J. STAPLETON, Senator, 41st District, JEANETTE F. REIBMAN, Senator, 18th District, VINCENT J. FUMO, Senator, 1st District, and H. CRAIG LEWIS, Senator, 6th District, Individually and in their official capacities,	:	*No. 7 Middle District Miscellaneous Dkt. 1992*
Appellants	:	
v.	:	
BRENDA K. MITCHELL, Acting Secretary of the Commonwealth, and WILLIAM BOEHM, Commissioner of the Bureau of Commissions, Elections, and Legislation, Department of State, in their official capacities only,	:	
Appellees	:	*ARGUED: March 7, 1992*

OPINION OF THE COURT

MR. JUSTICE PAPADAKOS ***FILED MARCH 26, 1992***

This case involves the redistricting of Pennsylvania's seats in the United States House of Representatives. After the 1990 census was taken, the Clerk of the United States Congress informed the Pennsylvania Secretary of State that Pennsylvania was henceforth only entitled to have twenty-one (21) seats in the United States House of Representatives, a net loss of two (2) seats or districts. From early 1991 to the present, the Pennsylvania Legislature failed to enact a 21-district reapportionment plan. On January 28, 1992, the first day for circulating nomination petitions for election to Congress (under 25 P.S. §2868), Appellants (eight Democratic State Senators) filed an equity action in the Commonwealth Court, invoking that Court's original jurisdiction against Appellees (certain State election officials). Noting that February 18, 1992, the last day to file nomination petitions, was fast approaching, Plaintiff-Appellants asked the Commonwealth Court to declare the existing congressional apportionment law (25 P.S. §3571) unconstitutional; to enjoin the implementation of the official congressional election schedule until a valid plan could be adopted; and to adopt a valid reapportionment plan if the Legislature was unable to do so. Senior Judge Barry of the Commonwealth Court held a prompt hearing and, on January 30, 1992, he granted a preliminary injunction on the basis that the existing 23-seat apportionment plan was unconstitutional, enjoining the implementation of the then present schedule for electing members of Congress in Pennsylvania. Judge Barry's order required all parties and intervenors, if any, to submit their proposed reapportionment plans to the Commonwealth Court no later than February 11, 1992. His order also provided notice that the Court would select a plan if the Legislature failed to act by February 11, 1992.

As of February 12, 1992, the Legislature had failed to enact a reapportionment plan. Hence, by order of that date, the

Commonwealth Court ordered final hearings to begin the next day, February 13, 1992, to receive evidence and to consider all proposed plans that had been timely filed on or before February 11, 1992. Plaintiff-Appellants presented three plans, styled Plaintiffs' Nos. 1, 2 and 3. Plaintiffs' No. 3 was later withdrawn. The Attorney General intervened and additional parties, a number of whom submitted plans of their own, were also granted intervenor status to represent the interests of specific counties or other geographical areas around the State or to protect the voting rights of African-Americans in various congressional districts. Additional details concerning these plans and other issues raised by some intervenors are addressed below.

Meanwhile, Plaintiff-Appellants applied to this Court to take plenary jurisdiction of the matter. By order of February 13, 1992, this Court exercised such plenary jurisdiction. We designated President Judge David W. Craig of the Commonwealth Court as Master to conduct hearings and report to us not later than February 26, 1992. The hearings before the Commonwealth Court began on February 13 and were concluded on February 15. Judge Craig's "Findings, Recommended Decision and Form of Order," along with a proposed election schedule revision were filed with this Court on February 24, 1992, and a copy thereof is attached to this Opinion as Appendix A. Subsequently, exceptions to Judge Craig's Findings and briefs were filed with this Court and oral arguments were held on Saturday, March 7, 1992, in Pittsburgh. We issued a Per Curiam Order on March 10, 1992, adopting Judge Craig's Findings, Recommended Decision and Form of Order, along with our "Revised Election Calendar" and dismissing all exceptions thereto. A copy of our Order is attached hereto as Appendix B. This Opinion explains our disposition of this matter.

Judge Craig's Recommended Decision (Appendix A) compares and evaluates the six different plans timely submitted to him. The plans scrutinized were Plaintiffs' No. 1 and No. 2; two plans styled O'Donnell A and O'Donnell B (both submitted by

Speaker of the House Robert W. O'Donnell and seven other Democratic members of the Pennsylvania House of Representatives); the "Murtha-McDade" Plan (a "bi-partisan" plan submitted by Congressmen John P. Murtha, Joseph M. McDade and nine other incumbent members of Pennsylvania's congressional delegation); and a plan styled "Loeper 1" (submitted by Senate Majority Leader F. Joseph Loeper and five other Republican State Senators). Plans filed after the February 11 deadline, including the "Ryan-Cornell" plan submitted by two Republican members of the Pennsylvania House - Matthew J. Ryan and Roy W. Cornell, and an amended version of the Loeper plan ("Loeper 2") were properly not considered by Judge Craig. As he pointed out, the various parties had many months to formulate their plans, and to have allowed consideration of plans, amendments or revisions submitted late would have created the potential of endless proceedings. Thus, Judge Craig was absolutely correct in adhering to the pre-announced deadline of February 11.

Judge Craig correctly notes that federal law requires, primarily, that districts be equal in population to the greatest practical extent. Slight departures from mathematical perfection have been justified by the federal courts only to advance the cause of equality in the following respects: avoiding fragmentation of local government territories and the splitting of election precincts; effectuating adequate representation of a minority group; creating compact and contiguous districts; maintaining relationships of shared community interests; and not unduly departing from the useful familiarity of existing districts. Finding of Fact No. 16 in Judge Craig's Recommended Decision (see Appendix A) is a table with nine columns summarizing the six competing plans.

After a detailed analysis of regional concerns, Judge Craig recommended approval of Plaintiffs' Plan No. 2 because it: (1) has a low maximum population deviation; (2) is consistent with minimal splitting of precincts; (3) achieves an enlarged number of two congressional districts with a majority of African-American population; and (4) comes closest to implementing the community-

of-interest factors in those regions across the State which have identified them. While the Murtha-McDade Plan achieved remarkable mathematical exactitude, it splits twenty-two (22) election precincts and twenty-seven (27) local governments. Next in mathematical exactitude, and both meeting constitutional standards, are O'Donnell Plan B and Plaintiffs' No. 2, respectively. Unlike O'Donnell Plan B, Plaintiffs' Plans No. 1 and 2 would achieve the goal of forming two black majority congressional districts, thought possible and, hence, constitutionally necessary in light of Pennsylvania's 9% African-American population, by increasing the African-American population in the- First Congressional District to 52.4% while maintaining a strong majority African-American population of 62.242% in the Second Congressional District.

Numerous exceptions to Judge Craig's report, and submissions from other interested persons objecting to aspects of the report, have been filed with this Court. They are set forth in full in Appendix C to this Opinion. We have consolidated them into the various legal issues raised and we will now address said issues.

I. Population Deviations

A number of exceptions filed contend that Judge Craig erred in recommending Plaintiffs' Plan No. 2 because that plan has a higher maximum total deviation than two other plans. In Wesberry v. Sanders, 376 U.S. 1, 84 S.Ct. 526, 11 L.Ed.2d 481 (1964), the United States Supreme Court held that congressional districts within a state must have equal numbers of people based on the "one man, one vote" principle. 376 U.S. at 7-8. While Kirkpatrick v. Preisler, 394 U.S. 526, 89 S.Ct. 1225, 22 L.Ed.2d 519 (1969), stands for mathematical absolutism in congressional reapportionment, the court has since conceded that "precise mathematical equality ... may be impossible to achieve in an imperfect world...." Karcher v. Daggett, 462 U.S. 725, 730, 103 S.Ct. 2653, 77 L.Ed.2d 133 (1983). Consequently, the Constitution

requires only that "districts be apportioned to achieve population equality 'as nearly as is practicable.'" Karcher, supra, 462 U.S. at 730.

To determine whether the maximum total deviation of a plan satisfies the "one person, one vote" standard, the United States Supreme Court has established a two-part test. Karcher, supra, 462 U.S. at 730. First, the party challenging a redistricting plan must show that "the population differences among districts could have been reduced or eliminated altogether by a good-faith effort to draw districts of equal population." Karcher, supra, 462 U.S. at 730. As Judge Craig correctly stated, however, "a plan is not per se unconstitutional just because a smaller population deviation could be achieved." Recommended Decision at 12; see also, Karcher, supra, 462 U.S. at 740 ("By itself, ... [appellees' showing that the Feldman Plan did not come as nearly as practicable to population equality] does not establish that the Feldman Plan is unconstitutional.") Rather, the existence of plans with smaller deviations simply obligates a court to apply the second part of the test, i.e., to ask whether the proponent of the plan can show that "each significant variance between districts was necessary to achieve some legitimate goal." Karcher, supra, 462 U.S. at 731; see, id., at 740 (showing that plan could have had smaller deviations "means only that the burden shifted to the State to prove that the population deviations in its plan were necessary to achieve some legitimate state objective").

Among the "legitimate state objective[s]" identified by the Court in Karcher v. Daggett were "making districts compact, respecting municipal boundaries, preserving the cores of prior districts, and avoiding contests between incumbent Representatives." Id. at 740. See, e.g., Turner v. State of Arkansas, 1991 WL 316875 (E.D. Ark. Nov. 15, 1991) (upholding congressional reapportionment plan which contained a 0.73% deviation, even though six other plans had smaller deviations, because variance achieved the legitimate state objective of attempting, to the extent possible, to keep counties and voters in the

same district to which they had been assigned under the prior redistricting plan); Stone v. Hechler, Civ. Action No. 91-0110-E, 1992 WL [14671] (N.D. W.Va. Jan. 7, 1992) (upholding congressional redistricting plan with deviation of 0.09% because it served goals of "preserving the cores of previous districts and maintaining district compactness;" court reasoned that "[t]he smaller the population deviation, the greater the importance of the State's interest, and the more consistently the plan as a whole reflects the State's interest, the smaller the State's burden of proof."); Wilson v. Eu, No. S022835, 1992 WL 12071 (Cal. Jan. 27, 1992) ("the need to form reasonably compact districts, to use census tracts rather than blocks in forming districts ... and to comply with the Voting Rights Act," justified a maximum range in the Congressional Plan of 0.25%).

Consistent with this body of cases,[1] Judge Craig properly held that the extremely small deviations in district populations may be justified by, inter alia, a desire to avoid splitting of political subdivisions and precincts, to provide adequate representation to a minority group, and/or to preserve communities of interest.

Judge Craig also properly held that Plaintiffs' Plan No. 2 inherently satisfies the "one person, one vote" requirement. That plan has a total maximum deviation of only 0.0111%. This deviation is smaller than those upheld in Turner, Stone and Wilson, and is fully justified by the policy of preserving the boundaries of municipalities and precincts. Plaintiffs' witness Mark McKillop, who supervised the drawing of the plan, testified that "[W]e did not feel that splitting a lot of municipalities would serve a purpose," and that eliminating all the deviations in Plaintiffs' Plan No. 2 "would [have] mean[t] additional municipal and voting district splits." Tr., Vol. I, p. 58. Thus, Plaintiffs' Plan No. 2 splits only

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[1] *Judge Craig relied on earlier cases, to wit, Shayer v. Kirkpatrick, 541 F.Supp. 922 (1982), aff'd. sub nom., Schatzle v. Kirkpatrick, 456 U.S. 966 (1982); Carstens v. Lamm, 543 F.Supp. 68 (1982); Dunnell v. Austin, 344 F.Supp. 210 (1972).*

nineteen (19) counties, eight (8) localities, and three (3) precincts - a smaller number than either O'Donnell Plan A, Loeper Plan 1, or the mathematically exact Murtha-McDade Plan.[2] *In short, Judge Craig sensibly held that Plaintiffs' Plan No. 2 satisfied the "one person, one vote" requirement, and the Intervenors' arguments to the contrary must be rejected.*

II. Section 2 of the Voting Rights Act

At the beginning of the hearings, Judge Craig stated one factor that he would consider was "whether the plans operate to dilute the voting impact of any minority." Tr., Vol. I, p. 11. After evaluating the various plans with this factor in mind, Judge Craig ruled that Plaintiffs' Plan No. 2 best protected minority voting rights. We agree. Judge Craig must be affirmed based on the evidence adduced at the hearings that: (a) Plaintiffs' Plan No. 2 did not effectively dilute minority strength in the Second Congressional District, and (b) all plans except Plaintiffs' Plan No. 2 did dilute minority voting strength in the First Congressional District.

The primary tool for preventing minority voting dilution is Section 2 of the Voting Rights Act of 1965, 42 U.S.C. §1973. As amended in 1982, Section 2(a) prohibits any state law or practice which "results in a denial or abridgement of the right ... to vote on account of race...." 42 U.S.C. §1973(a). Section 2(b) provides that:

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[2] *The only plan that split fewer precincts and political subdivisions than Plaintiffs' Plan No. 2 was O'Donnell Plan B, which also had a slightly lower deviation. As shown below, however, this plan failed to give adequate recognition to minority voting strength in Philadelphia, since it created only one district with an African-American majority, whereas Plaintiffs' Plan No. 2 created two such districts.*

> *A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the state or political subdivision are not equally open to participation by members of the class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the state or political subdivision is one circumstance which may be considered. Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.*

42 U.S.C. §1973(b) (emphasis added).

All parties submitted plans that decreased the African-American percentage in the Second Congressional District (which is currently about 81% African-American in total population) and increased it in the First (which is currently 34% African-American). Plaintiffs' Plan No. 2 made both districts over 50% African-American in total population, with the First Congressional District at 52.4% and the Second Congressional District at 62.242%. The evidence showed that both Districts would henceforth give African-Americans the opportunity to elect candidates of their choice. Tr., Vol. I, pp. 71-72. There is no evidence that any other plan provided such an opportunity. The issue that divided the various parties was whether Plaintiffs' Plan No. 2 lowered the African-American percentage too much in the Second Congressional District thereby depriving African-American voters of their opportunity to participate in the political process and elect candidates of their choice.

Plaintiffs' Plan No. 2 creates a so-called "super-majority" African-American district of 62.242% in the Second Congressional District. Recommended Decision, at 25. This district is an "effective" minority district, i.e., one that will provide African-American voters an opportunity to continue to elect a representative of their choice. Tr., Vol. I, pp. 71-72.

Although it has been argued that the Second Congressional District should have a total African-American population closer to 70%, Judge Craig properly found that "The record here contains no evidence that 65% to 62% would risk minority group effectiveness...". Recommended Decision, at 25. Moreover, the cases in this Court and others confirm that Plaintiffs' 62% African-American district will not dilute minority voting rights. This Court recently affirmed a legislative reapportionment plan which contained four State Senate Districts with a 60% African-American total population in each. In re: Pennsylvania Legislative Reapportionment Commission, No. 190 E.D. Misc. Dkt. 1991 (February 14, 1992). A voting analysis in that case indicated that the participation rate of African-Americans exceeded that of whites in Democratic primary elections in Philadelphia and that there is considerable "crossover" voting by whites for Democratic African-American candidates in Philadelphia. Based on these facts, the analysis concluded that a district with a total African-American population of approximately 60%, or a voting age population in the high 50's, would provide African-American voters a viable opportunity to elect candidates of their choice.

Other courts have approved districts with African-American total populations well below 65%. For example, in Jordan v. Winter, 604 F.Supp. 807 (N.D. Miss.) aff'd, 469 U.S. 1002 (1984), the court ordered into effect a redistricting plan for Mississippi that established one congressional district with an African-American total population of 58.3%. The court rejected the plaintiffs' arguments that this percentage was too small to enable African-Americans to elect a representative of their choice and that a district with a voting age population of at lease 60% African-

American was necessary. Id. at 814. This district, in 1986, elected Mississippi's first African-American congressman since Reconstruction.

Similarly, in James v. City of Sarasota, 611 F.Supp. 25, 28 (M.D. Fla. 1985), the court held that a district containing a 50.1% African-American total population and a 42.6% voting age African-American population was sufficient for purposes of Section 2, despite the existence of white bloc voting, because minority voter turnout had historically exceeded that of whites in the district. The Department of Justice, in a letter to the court, noted that:

> *...figures on minority voting-age populations [are] far more useful to the analysis than total minority population percentages. But in neither case do we attach particular significance to a 65 percent population figure, and no attempt is made to add arbitrarily increments of five percentage points each to compensate for age, registration and turn-out differences.*
>
> *Accordingly, the Attorney General has frequently concluded, based on the facts presented in a particular submission, that districts containing a minority population significantly less than 65 percent of the total are racially fair districts and that the plan submitted is entitled to Section 5 preclearance.*

611 F.Supp. at 32 and 33.

In short, there is no legal requirement either in the courts of the Commonwealth or the federal courts, that a district have a 65% African-American total population to satisfy Section 2. The arguments to the contrary must, therefore, be rejected.

In Thornburgh v. Gingles, 478 U.S. 30, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986), the United States Supreme Court stated that "Dilution of racial minority group voting strength may be caused by the dispersal of blacks into districts in which they constitute an ineffective minority of voters or from the concentration of blacks into districts where they constitute an excessive majority." 478 U.S. at 46, n. 11. Here, other plans concentrate African-American voters into the Second Congressional District thereby diluting the voting strength of African-American voters in the First Congressional District.

The justification advanced for this dilution has been that the Second Congressional District had to be over 65% in order to protect the incumbent. Such a justification, however, does not mandate making the Second Congressional District almost 70% African-American when the result is to dilute African-American voting strength in the neighboring First District, which is only 46.76% African-American under the Loeper Plan and even less under both O'Donnell Plans and the Murtha-McDade Plan. Although incumbency protection is not in and of itself an inappropriate consideration, it may not be accomplished at the expense of minority voting potential. Garza v. County of Los Angeles, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 111 S.Ct. 681 (1991). There is no statistical evidence indicating that a 70% African-American district is necessary to provide the African-American community an equal opportunity to elect a representative of their choice. To the contrary, the evidence shows that a 62% African-American district would suffice. The effect of creating a concentrated Second Congressional District is to dilute impermissibly the voting strength of minorities in the adjacent First Congressional District. See, Williams v. City of Dallas, 734 F.Supp. 1317, 1415 (N.D. Tex. 1990). We think that Judge Craig

made a sound, lawful choice under these facts and circumstances, and we adopt it as our own.[3]

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[3] *The Loeper Intervenors also argue that Plaintiffs' Plan No. 2 reduces the African-American population in Congressional District 14 (Pittsburgh) from 23% to 17.81% and that Judge Craig improperly failed to make findings that these reductions would be harmless to minority voters in Allegheny County. This argument must be rejected. Neither the Loeper Intervenors nor anyone else has offered any evidence regarding the degree of influence presently enjoyed by minority voters in Allegheny County, much less any evidence that such influence would be impaired by the small reduction in the African-American percentage in a district that already has a relatively small African-American population.*

III. Additional Criteria

A. Plaintiffs' Plan No. 2 is Politically Fair

Plaintiffs' Plan No. 2 results in a politically fair balance in the Pennsylvania delegation between Democrats and Republicans. Pennsylvania is losing two (2) seats, and Plaintiffs' Plan No. 2 divides the loss evenly. Consequently, the estimated political party balance will be ten (10) Democratic and eleven (11) Republican districts. The other plans submitted to this Court appear to strike a similar political balance.

B. Plaintiffs' Plan No. 2 Splits a Minimum Number of Municipalities and Precincts

Any municipality or precinct splits in Plaintiffs' Plan No. 2 were necessary to comply with applicable state and federal legal requirements concerning the "one person, one vote" standard or minority voting rights. As discussed above, Plaintiffs' Plan No. 2 splits far fewer precincts and municipalities than either the mathematically exact Murtha-McDade or the Loeper Plan, and splits about the same number as the O'Donnell Plans. We are sympathetic to those Intervenors, or parties who filed amicus briefs with this Court, complaining of county, municipality or precinct splits in their areas. We think, however, that some such splitting is inevitable and that Plaintiffs' Plan No. 2 eliminates these defects to the maximum degree possible.

IV. The February 11, 1992 Deadline

We repeat what we stated above. Judge Craig's rigid adherence to the February 11, 1992, deadline was absolutely correct. The parties complaining had ample notice of the deadline and should have been well aware of its importance as they would be of any statute of limitations or other judicial order imposing a time deadline. Not to adhere to the deadline imposed would create

or would have created chaos and we will not countenance such a result.

For the reasons set forth above, we have adopted Judge Craig's "Findings, Recommended Decision and Form of Order" and dismissed all exceptions filed to it.

MR. CHIEF JUSTICE NIX, MR. JUSTICE LARSEN and MR. JUSTICE McDERMOTT did not participate in the consideration or decision of this case.

APPENDIX "A"

ROBERT J. MELLOW, Senator, 22nd District, J. WILLIAM LINCOLN, Senator, 32nd District, LEONARD J. BODACK, Senator, 38th District, MICHAEL J. O'PAKE, Senator, 11th District, PATRICK J. STAPLETON, Senator, 41st District, JEANETTE F. REIBMAN, Senator, 18th District, VINCENT J. FUMO, Senator, 1st District, and H. CRAIG LEWIS, Senator, 6th District, Individually and in their official capacities,	:	IN THE SUPREME COURT OF
	:	No. 7 M.D. Misc. Dkt. 1992
	:	COMMONWEALTH OF PENNSYLVANIA
	:	NO. 0025 M.D. 1992
Petitioners,	:	
v.	:	HEARD: FEBRUARY 13, 14, 15, 1992
BRENDA K. MITCHELL, Acting Secretary of the Commonwealth, and WILLIAM BOEHM, Commissioner of the Bureau of Commissions, Elections, and Legislation, Department of State, in their official capacities only,	:	
Respondents.	:	

FINDINGS, RECOMMENDED DECISION AND FORM OF ORDER
By President Judge David W. Craig
Commonwealth Court of Pennsylvania

FILED:
February 24, 1992

This case involves some feats of modern computer technology, by which one plan has been able to reapportion Pennsylvania's 1990 population of 11,881,643 persons with ultimate mathematical precision among 21 proposed congressional districts so that the average deviation from the ideally equal district population of 565,793 is *less than 1 person.*

Where the task of selecting among at least six reapportionment plans has fallen to the judiciary because the General Assembly has not acted, does the constitutional principle requiring district population equality "as nearly as is practicable....," Wesberry v. Sanders, 376 U.S. 1, 7-8 (1964), mandate acceptance of only a mathematically absolute plan?

Or is some departure from mathematical perfection warranted by concerns about whether the proposed congressional districts

- are compact and contiguous,
- facilitate community-of-interest concerns of minority groups and of areas having regional ties, and
- minimize fragmentation of municipalities and voting precincts,

to provide reassurance that gerrymandering is not involved?

PROCEDURAL HISTORY[1]

(1) On December 31, 1990, after the 1990 decennial census count established Pennsylvania's population, at the point of counting, to be 11, 881, 643, the Clerk of the U.S. Congress issued a Certificate of Entitlement to the Pennsylvania Secretary of the Commonwealth entitling the Commonwealth henceforth to have only 21 districts, a loss of 2 seats below the 23 districts established by the General Assembly in 1981. 25 P.S. §3571.

(2) During 1991 and in 1992 until the present, efforts of Pennsylvania's legislators to enact a new 21-district reapportionment statute fell short of the votes needed for passage in both houses.

(3) On January 28, 1992, the first day for circulating nomination petitions for election to the U.S. Congress, 25 P.S. §2868, eight Democratic state senators[2] filed this equity action in the original jurisdiction of the Commonwealth Court against Pennsylvania's state election officials.[3]

The pleadings noted that the last day for filing nomination petitions, February 18, 1992, was fast approaching, and the plaintiffs requested this court

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[1]*Each numbered paragraph is a finding of fact. Unnumbered paragraphs embody description of the content of pleadings, the content of the docket and discussion.*

[2]*Robert J. Mellow, J. William Lincoln, Leonard J. Bodack, Michael J. O'Pake, Patrick J. Stapleton, Jeanette F. Reibman, Vincent J. Fumo and H. Craig Lewis.*

[3]*Acting secretary of the Commonwealth Brenda K. Mitchell, Elections Commissioner William Boehm and the Pennsylvania Department of State.*

- to declare the existing congressional apportionment law, 25 P.S. §3571, to be unconstitutional, as in violation of art. 1, §2 of the U.S. Constitution,

- to enjoin the implementation of the official election schedule as to the congressional election until a valid plan is adopted, and

- to adopt a valid reapportionment plan if the legislature continues to be unable to do so.

Senior Judge Barry of the Commonwealth Court held a prompt hearing on the plaintiffs' application for a preliminary injunction with respect to the relief requested.

(4) The pre-existing congressional districts now depart from the ideal population of 565,793 per district by as much as 19.89% below that figure (present 14th District with 112,514 fewer persons) and as much as 3.76% above the ideal figure (present 16th District with 21,255 persons above the ideal).

Of course, the underpopulation of most existing districts is exacerbated by the fact that there are 23 of them, instead of just 21 districts, on which the ideal population is based.

On January 30, 1992, Judge Barry granted a preliminary injunction on the basis that the present apportionment is unconstitutional, enjoining the implementation of the present schedule for electing members of Congress in Pennsylvania.

The order retained jurisdiction and required all parties and intervenors, if any, to submit their proposed reapportionment plans to this court not later than February 11, 1992.

Finally, Judge Barry's order advised that the court would select a plan for adoption and implementation if the General Assembly had not enacted a valid 21-district plan by February 11, 1992.

(5) As of February 12, 1992, the legislature had not enacted any reapportionment plan for Pennsylvania.

Hence, by order of that date, the Commonwealth Court directed final hearings to begin on the following day, Thursday, February 13, 1992, to receive evidence and to consider all proposed plans which had been timely filed on or before February 11.

In the meantime, the plaintiffs presented 3 plans, called Plaintiffs 1, 2 and 3. The Attorney General intervened, and additional parties were granted intervention as follows.

(6) Eight Democratic members of the Pennsylvania House of Representatives[4] intervened and timely filed 2 plans, called O'Donnell A and O'Donnell B.

(7) Representative Harold James of the Pennsylvania House of Representatives also timely filed a plan, the Hughes Plan, which, although in the form of a statewide bill, seeks political effectuation of African-American interests in congressional districts in Philadelphia.

(8) Two members of Pennsylvania's congressional delegation, Congressmen Joseph M. McDade and John P. Murtha,

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[4] *Robert W. O'Donnell, H. William DeWeese, Allen G. Kukovich, Dwight Evans, Frank Oliver, Thomas Michlovic, Gordon Linton and Harold James.*

intervened and timely presented a plan, the Murtha-McDade Plan, prepared on behalf of 11 members of the present Pennsylvania congressional delegation.

(9) Six Republican state senators[5] intervened and timely filed a plan, called Loeper 1.

(10) Four groups of intervenors, persons concerned with maintaining congressional district configurations, also intervened with reference to Bucks County, Cumberland County, Berks and Schuylkill Counties, and the Lehigh Valley, involving Lehigh and Northampton Counties. These parties proposed to support certain statewide plans and to oppose other plans.

(11) On February 12, 1992, after the expiration of the February 11 deadline set by Judge Barry's order, two Republican members of the Pennsylvania House of Representatives, Matthew J. Ryan and Roy W. Cornell, intervened, but the plan they filed had to be deemed not timely in accordance with this court's order.

(12) Finally, after February 11, 1992, intervention also was obtained by Albert Swann, together with the Frederick Douglas Society and Philadelphia Leadership Conference, with a petition expressly supporting a proposal to establish an additional congressional district in which the African-American population would be a majority group, over and above the one district (the Second) now having a majority Black population.

(13) Congressman Lucien Blackwell, who sought intervention after the record was closed, was allowed intervention limited to the filing of a brief.

The plaintiffs had applied to the Pennsylvania Supreme Court to take plenary jurisdiction and had also filed a companion

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[5] *F. Joseph Loeper, Robert C. Jubelirer, D. Michael Fisher, Charles Lemmond, Hank Salvatore, Noah Wenger.*

action in the United States District for the Middle District of Pennsylvania.

During the course of the three days of hearings in the Commonwealth Court, the Pennsylvania Supreme Court, by order of February 13, adopted a sound course for expediting the matter — and obviating the delay which could be incurred by the course of an appeal-of-right taken from the Commonwealth Court to the Supreme Court — by taking plenary jurisdiction, designating President Judge David W. Craig of the Commonwealth Court as Master to conduct the hearings and report to the Supreme Court not later than Wednesday, February 26, 1992 with findings, a recommended decision and a form of order.

Judge Sylvia Rambo of the United States District Court for the Middle District of Pennsylvania advised that the district court would await state court action providing that the Commonwealth Court had acted by Monday, February 24, 1992 (the date on which these findings, recommended decision and form of order are being filed).

The hearings by the Commonwealth Court, begun on Thursday, February 13, were concluded on Saturday, February 15, at which time the election administrators agreed to file a proposed election schedule revision with the Commonwealth Court by February 19, with briefs to be filed by regional parties on Thursday, February 20, and by statewide parties on Friday, February 21.

(14) During the course of the three days of hearings, the plaintiffs withdrew Plaintiffs' Plan 3.

(15) The Republican state senators sought to present an amended version of Loeper Plan 1, which amendment is referred to as Loeper Plan 2 in the record. Having deferred ruling on its admission for consideration as a statewide plan, the President Judge ruled at the close of the evidence that such amended plan, Loeper

2, was not entitled to consideration as a separate plan because it had not been timely filed by February 11, but held that testimony concerning it was admissible as evidence relevant to the evaluation of all other plans.

The President Judge did not reverse any ruling, but only deferred ruling to provide maximum consideration, even as to untimely filings.

Exclusion of Untimely Plan Filings

Enforcement of the February 11 filing deadline with respect to statewide proposals has been necessary to assure that the courts would have a reasonable opportunity to consider the plans which were timely filed.

All parties have had many months to prepare a proper plan.

If the court had opened this time-constrained case to late plans and amendments filed after the February 11 deadline plainly stated in Judge Barry's order, the proceedings would have been endless because (1) new intervenors would have required many new plans to be reviewed, and (2) the earlier parties could have amended their timely plans repeatedly, to surpass the new plans.

Hence, the late amendment of the Loeper Plan was excluded, although Loeper counsel was allotted full participation and the amended data was received in Court Exh. AA.

Similarly, the Ryan-Cornell Plan proponents were accorded status as parties with full participation in cross-examination. Ryan Plan data was received in Court Exh. AA.

Exclusion of full consideration of the Ryan Plan was justified because that plan was in existence on and before February 11. There was no reason that the plan could not have been timely presented. It was knowingly withheld from being filed in the court

on that date, on the ground that further legislative action then was possible.

The President Judge did not exclude plans on the basis of political party. The President Judge excluded all untimely proposals and considered all timely ones of all parties.

THE CONTROLLING CONSTITUTIONAL PRINCIPLES

Below, as Finding No. 16, a factual comparison of the plans will be presented. Before considering that finding and other facts constituting the minor premises of the logic involved, reference to the constitutional principles, as enunciated by the United States Supreme Court, is necessary.

Equality of Congressional District Populations One Person, One Vote

Congressional redistricting becomes a judicial responsibility only when, as here, the state legislature has not acted after having had an adequate opportunity to do so. White v. Weiser, 412 U.S. 783, 794-95 (1973), Reynolds v. Sims, 377 U.S. 583, 586 (1964).

In applying art. I, §2 of the U. S. Constitution, the United States Supreme Court has held, as noted above, that the goal is to make "as nearly as is practicable one man's vote in a congressional election ... worth as much as another's." Wesberry.

This requirement is the "preeminent if not the sole, criterion" for appraising the validity of redistricting plans. Chapman v. Meier, 420 U.S. 1, 23 (1964).

The United States Supreme Court has declined to adopt any particular deviation figure as the maximum deviation per se allowable. Kirkpatrick & Preisler, 394 U.S. 526, 530-31 (1969). Population variances among districts must be justified. Id.

That reluctance has fostered a wise constraint, as we can see by noting our advancing ability, in the last two decades, to perform mathematical manipulations by computer tools which can review in a short time great multitudes of variables which could not be examined by the machine-aided methods of the past within any feasible time period.

However, a plan is not per se unconstitutional just because a smaller population deviation could be achieved. Karcher v. Daggett, 462 U.S. 725 (1983).

Consider the various maximum total deviations — at times on this record called the "maximum range of deviations" — which have been accepted or rejected during recent years. The Supreme Court has defined maximum total deviation as

> the sum of the percentage by which ... [the] most populous district ... exceeds the ideal district population ... and the percentage by which ... the least populous ... [is] below this ideal.

Board of Estimate v. Morris, 489 U.S. 688, 700 n.7 (1989).

In 1969, Kirkpatrick held that a 5.97% maximum deviation was bad. In 1973, White v. Weiser rejected a .284% maximum deviation (less than 3/10ths of 1 percent) in favor of a .149% maximum deviation.

In 1982, the most recent Pennsylvania Congressional District Reapportionment Case, 567 F. Supp. 1507 (M.D. Pa. 1982), aff'd without opinion, sub nom., Simon v. Davis, 463 U.S. 1219, (1983), an opinion by Circuit Judge Weis, for a three-judge court, accepted a maximum deviation of .2354%, and, after further census revision, a maximum deviation of .399%, noting that the difference between those two figures — one-fourth of one percent

v. four-tenths of one percent — could be statistically insignificant, particularly when our constantly moving population necessarily means that a census count is simply the "snapshot" of a particular moment in time. 567 F. Supp. at 1515.

This present case has produced, in the Murtha-McDade Plan, the ultimate of equality with a maximum deviation of .0000017%, consisting of a difference of just one person out of 565,793. Departures from such mathematical perfection, according to the federal courts, are justified but only to advance the cause of equality realistically in the following respects:

- avoiding fragmentation of local government territories and splitting of election precincts, Shayer v. Kirkpatrick, 541 F. Supp. 922, 933 (1982), aff'd sub nom., Schatzle v. Kirkpatrick, 456 U.S. 966, (1982);

- effectuating adequate represen-tation of a minority community, Shayer, 541 F. Supp. at 930-31;

- creating districts which are compact and contiguous, Carstens v. Lamm, 543 F. Supp. 68, 82-88 (1982);

- maintaining relationships of shared community interests, Carstens, 543 F. Supp. at 82, 90-91; and

- not unduly departing from the useful familiarity of existing districts, Dunnell v. Austin, 344 F. Supp. 210 (1972).

All timely plans must be considered on the same footing, despite the Murtha-McDade Plan's claim to be the only "bipartisan"

one. It is, but, like all the plans, it is not disinterested, having been submitted on behalf of 11 incumbents.

FACTUAL ANALYSIS

Direct and close comparison of the six competing plans is facilitated by Finding No. 16, which follows.

First, an explanation of the columns in Finding No. 16 is desirable.

Column 1 — Identification of Plan: In addition to the record name for each plan, this column identifies the specific legislative bills, if any, which have substantially embodied the plan in the General Assembly. None of the listed bills was passed by both houses.

Column 2 — Maximum Deviation: As defined above, this percentage figure is the sum of the percentage by which the most populous district exceeds the ideal equality number, plus the percentage by which the least populous district falls below that ideal number.

Column 3 — Average Deviation: The mean figure which reflects an average of the percentage deviations for all 21 districts in the respective plan.

Column 4 — Split Municipalities: Remembering that the term "municipality" includes counties, as well as cities, boroughs and townships in Pennsylvania, 1 Pa. C.S. §1991, this column gives a count of the municipalities to which more than one of the proposed districts of the plan applies. This column treats Philadelphia as a county rather than a city.

Column 5 — Split Election Precincts: Although a voting unit in Pennsylvania is officially termed an "election district,"

25 P.S. §2602(g), the table and the record here use, for the same concept, the term "precinct" in order to avoid confusion with the congressional "districts" which are the principal subject matter of this proceeding.

Columns 6, 7 — African-American Population of District 1: These columns relate to the potentiality of a second congressional district with an African-American majority population, which would be in addition to Congressional District 2, which all plans recognize as presently being a majority African-American district in Philadelphia. Column 6 gives the African-American population percentage of the respective proposed district, and Column 7 gives the percentage of voting age African-American population in the proposed district.

Column 8 — Regional Communities of Interest: This column indicates those plans which recognize the community-of-interest relationships established by the evidence (discussed below) as to (1) Lehigh Valley's long-standing joinder of Lehigh and Northampton Counties in one congressional district, (2) Berks and Schuylkill Counties' long-standing joinder in one congressional district, (3) keeping Bucks County in one congressional district, and (4) retention of Carlisle and adjacent municipalities such as North Middleton Township, in Cumberland County, within the 19th Congressional District.

Column 9 — Estimates of Party Balance of Seats: Based solely on party registration statistics, this column gives the number of congressional seats thus projected for each party with respect to each plan across the state.

Because the criterion of compactness and contiguity involves visual inspection of a graphic presentation of the shape of a congressional district, that factor cannot be reflected by means of the tabulation in Finding No. 16, but must be considered separately.

The information tabulated in Finding No. 16 is drawn from Court Exhibit AA, comprised of listings of plan elements supplied by each party proposing a statewide plan, to confirm the stipulations of data which counsel entered into the record. Record Vol.1: pp.14-16, 20, 31, 61, 62, 76.

FINDING NO. 16

1	2	3	4
PLAN BILL NO. PRNTR. #	**MAXIMUM DEVIATION %**	**AVERAGE DEVIATION %**	**SPLIT MUNICIPAL UNITS**
PLNTFS.1 HB 541 #3024	.1616%	.0393%	16 Counties 1 Local
PLNTFS.2 HB 541 #3024	.0111%	.0024%	19 Counties 8 Local
O'DONN.A HB 2185 SB 205	.0113%	.0026%	23 Counties 8 Local
O'DONN.B	.0083%	.0027%	17 Counties 8 Local
LOEPER 1 HG 541 #3053	.1334%	.0324%	22 Counties 10 Local
Murtha-McDade	.0000% (1 person)	.0000% (less than one person)	21 Counties 27 Local

FINDING NO. 16

5	6	7	8	9
SPLIT ELECTION PRECINCTS	AFR-AMER POP. C.D. 1	AFR-AMER V.A.P. C.D. 1	REGIONAL INTERESTS (COUNTIES)	PARTY REGIS. BALANCE
1	52.4%	49.7%	LEHIGH BERKS CUMB.	10 D 11 R
3	52.4%	49.7%	LEHIGH BERKS CUMB.	10 D 11 R
0	39.2%	36.1%	CUMB.	10 D 11 R
0	36.6%	33.6%		11 D 10 R
1	46.7%	43.4%	LEHIGH	11 D 10 R
22	41.7%	38.0%	CUMB.	10 D 11 R

In cases like the present, the judicial task has usually consisted of choosing one redistricting plan out of two or more, as the plan conforming most closely to constitutional standards, e.g., White v. Weiser, O'Sullivan v. Brier, 540 F. Supp. 1200 (1982).

Unequipped to formulate a plan from scratch, the courts are also hard put to develop an ideal plan from a combination of several plans because that would be a feat similar to assembling a single completed jigsaw puzzle from the disparate pieces of several of them.

Moreover, if the courts adhere to a tradition of choosing one or the other of the plans proposed by the antagonists — like an arbitrator who confines approval to either the high demand of one side or the low offer of the other — then the challenge to develop mutually acceptable plans will be left in the legislature, where the job of political compromise belongs, rather than with the courts.

Therefore, the general question in this case is: Which of the half-dozen plans timely offered to this court comes closest to the constitutional standards in all pertinent respects?

Districts Equal In Population
To The Greatest Practicable Extent

The Murtha-McDade Plan (M-McD Exhs. 1-3) has achieved remarkable mathematical exactitude, with a maximum deviation of .0000017% and an average deviation of .0000009%.

However, the Murtha-McDade Plan falls below others precisely because the cost of achieving maximum mathematical equality lies in having the congressional district boundaries split 22 election precincts as well as 27 local governments.

Although 22 precincts constitute a small fraction of the 9,434 precincts in the state (R1:164), a serious election

administration problem arises from requiring the voters in a single precinct to look to two different sets of congressional candidates. Shayer.

The problem is not a minor one. It arises from the fact that exactitude requires manipulation of the smallest census unit, the census block; Pennsylvania has 300,000 of them (R1:164) and their boundaries, based on visual limits useful to census taker functions, are not coterminous with the governmentally determining boundaries of the 9,434 election precincts.

Of course, redrawing official precinct boundaries to match the ideal congressional district is theoretically possible, but is not practical because each election precinct must serve many other different exercises of the franchise — for the election of legislators and council members, for example.

Nearest to the Murtha-McDade Plan in exactitude is the O'Donnell Plan B (O-B Exhs. 4-6), with a .0083% maximum deviation (R1:16), a .0027% average deviation (R1:20) and no split precincts.

Also close in equality of districts is Plaintiffs' Plan 2, with .0111% maximum deviation (R1:14), a .0024% average deviation, and with three split precincts, one of which affects no population.

The Loeper Plan, splitting just one precinct, has only a slightly higher deviation, at .1334% maximum and .0324% average.

The Murtha-McDade Plan proponents have questioned the validity of data adjustments made by the Legislative Data Processing Center and therefore affecting all of the other plans at issue, as drawn by legislative caucuses.

The Executive Director of the Legislative Data Processing Center described how the Center dealt with the problem which arises when a census block is split between two precincts or among

more than two precincts (R1:162). This problem involves 2.6% (7,915) of the 300,000 census blocks in Pennsylvania; none of the census blocks are split across any municipal boundary.

Rather than arbitrarily assign a split census block entirely to one precinct or another, the Legislative Data Processing Center, since 1980, has divided the census block population between the two precincts in proportion to the ratio of voting registrations in the two precincts.

The Murtha-McDade proponents' question is based on the contention that such an adjustment can be an invalidating factor because it departs from the official U. S. census figures. However, no authority for that proposition has been presented, and it is obvious that an arbitrary assignment of all of the population of a split census block to just one of the precincts would provide a result necessarily less accurate, and therefore less valid than the adjustment described.

Further evaluation of these plans, all of which are acceptable in terms of population equality, must ultimately depend upon other criteria. Karcher.

Racial Minority Empowerment or Dilution

Because the African-American population constitutes 9% of Pennsylvania's people, the formation of two Black majority districts is possible. When possible, an increase in the number of minority-in-the-majority districts is constitutionally required. Thornburgh v. Gingles, 478 U.S. 30 (1986); Jeffers v. Clinton, 730 F. Supp. 196 (1989); Hastert v. State Board of Elections, 777 F. Supp. 634, 651 (1991).

Philadelphia, one of the three Pennsylvania counties large enough to embrace more than one congressional district, has a 39.85% African-American population (R1:38). Therefore, the

various planners have looked to Philadelphia and to the City of Chester, the city in adjacent Delaware County which is the only Pennsylvania city with an African-American majority of citizens.

To date, the only African-American majority congressional district has been the Second District, currently at about 81% African-American population (R2A:54).

The key question is whether another Black majority congressional district can be mapped out of the adjoining First District, by including in it Chester City and, necessarily, some small part of the present super-majority Second District.

Not surprisingly, the serious positions of the parties with special African-American concerns differ on this issue.

Supporters of the Hughes Plan for Philadelphia, represented by intervenor Harold James, would avoid reducing the Second District below 68% African-American population by raising the First District African-American population only to 47.18%, not a majority. Although that First District would also then have an ethnic Hispanic population of 10.71%, which is an acceptable consideration, Campos v. City of Baytown, Texas, 840 F.2d 1240 (5th Cir. 1985), the result does not fully address the racial group goal by counting in a group which is an ethnic one in census terms. Moreover, aggregating two minority groups is allowable only if they are shown to be politically cohesive, League of United Latin American Citizens v. Midland, 648 F. Supp. 596 (1986), and there is no such proof on this record as to Hispanic and Black minorities.

There has been a contention that, to be a safe super-majority district, the Second District should not go below 69% or 68% African-American population. Congressman Blackwell, the incumbent of the Second District, permitted to intervene late in this case to submit a brief, contends that reduction below the present 81% African-American population would be a "dilution" of the minority representation effectiveness, but that term has normally

been applied when the result is to fence minority groups into minority voting positions. Carstens.

Minority voting should be maximized as much as possible. Jeffers v. Clinton.

The Loeper Plan keeps the Second District at 68.055% African-American population but at the cost of achieving only 46.7% African-American population in the First District. The excluded Loeper Plan amendment, with 65.857% African-American population in the Second District still would have had the First District just below a majority of African-American population, with 49.048%.

The Ryan Plan data in Court Exh. AA shows that, even if it had been timely filed so as to receive full consideration, it would not be acceptable because it did not create another Black majority district, in that its proposed First District would have been 47.5% African-American population.

Intervenors Philadelphia Leadership Conference, Frederick Douglas Society and Albert Swann urge the court to uphold the creation of a second African-American minority-in-majority district, namely the First District, while maintaining a substantial majority population of the minority group in the Second District.

The Plaintiffs' plans, both 1 and 2, would achieve that goal by getting the First District past the 50% barrier to 52.4% African-American population (R1:62), which would still leave the Second District at a healthy 62.242% African-American majority (R1:61), still entitled to be labeled as a strong majority, if not a "super" one.

The record here contains no evidence that 65% or 62% would risk minority group effectiveness (R3:21, 22). Indeed, a 60% minority group threshold has been held to be acceptable in this respect. Martin v. Mabus, 700 F. Supp. 327 (S.D. Miss. 1988).

The O'Donnell Plan A, on the other hand, proposes only 39.2% in the First District and the O'Donnell Plan B only 36.6% in the First District. The Murtha-McDade Plan also does not achieve a Black majority in the First District, with a 41.7% African-American population figure.

The hearings in this case have investigated this matter from all aspects, even pointing out that many African-American voters which would be added to the First District from Chester City may be registered Republican, not Democratic. Of course, that is not a startling revelation. No court can accept any false stereotypical belief that Black voters have a monolithic position. Indeed, the variety of views in this case disprove any such idea.

On the basis of deviations from equality minimized as much as possible, with a lessened administrative problem as a result of minimal precinct splitting, and embodiment of a potential for two African-American majority districts, our scrutiny now must focus on Plaintiff Plan 2 as the leading prospect for approval. Examination of that plan in relation to the salient regional concerns, as voiced in this record, must come next.

Regional Concerns

Various intervenors have raised community-of-interest issues with respect to five regions of the state. Evidence of a community of interest among neighboring areas in those regions has been clear and undisputed.

Cheltenham Township, Montgomery County

By brief amicus curiae, Cheltenham Township in Montgomery County has reflected a desire to keep the entire township in the Thirteenth Congressional District.

(17) That is proposed by Plaintiffs' Plans 1 and 2, by the Loeper Plan and by the O'Donnell Plans A and B. However, the Murtha-McDade Plan describes only 73 persons out of Cheltenham's population of 34,923 as being in the Thirteenth Congressional District, thus placing the bulk of Cheltenham elsewhere.

Lehigh Valley, Lehigh and Northampton Counties

(18) Undisputed testimony by Intervenors Freeman, Ritter and McHale establish that Lehigh and Northampton Counties, with aggregate population close to the ideal district population, have been together within the Fifteenth Congressional District since 1972.

(19) The valley itself, its circulation arteries, its common news media, and its organizational and cultural ties have a unifying influence on this Lehigh Valley Area. (R3:154-190).

(20) None of the statewide plans precisely include all of the area preferred by the Lehigh Valley advocates, who would also include a portion of Berks County. The two counties of Lehigh and Northampton are joined by Plaintiffs' Plans 1 and 2, and by the Loeper Plan. The O'Donnell Plans A and B and the Murtha-McDade Plan do not embrace all of the two counties in a proposed congressional district.

Berks and Schuylkill Counties

(21) The evidence presented by Intervenor Brightbill establishes that the Berks and Schuylkill Counties share a community of interest in a common economic base, in circulation arteries, and in schools of higher education as well as other matters. (R3:190-198)

(22) The relationship of these two entire counties is maintained in Plaintiffs' Plans 1 and 2 but not in the O'Donnell A or B Plans, the Loeper Plan or in the Murtha-McDade Plan.

Cumberland County

(23) Evidence on behalf of Intervenor Jarvis supports the affinity of Carlisle and North Middleton Township, in Cumberland County, with other communities in the Nineteenth Congressional District, rather than in the Ninth.

(24) Plaintiffs' Plans 1 and 2, O'Donnell Plan A and the Murtha-McDade Plan maintain that relationship. The O'Donnell Plan B and the Loeper Plan do not do so.

Summary

(25) The Plaintiffs' Plans 1 and 2 are the only plans which substantially satisfy all of the regional concerns.

Allegheny County

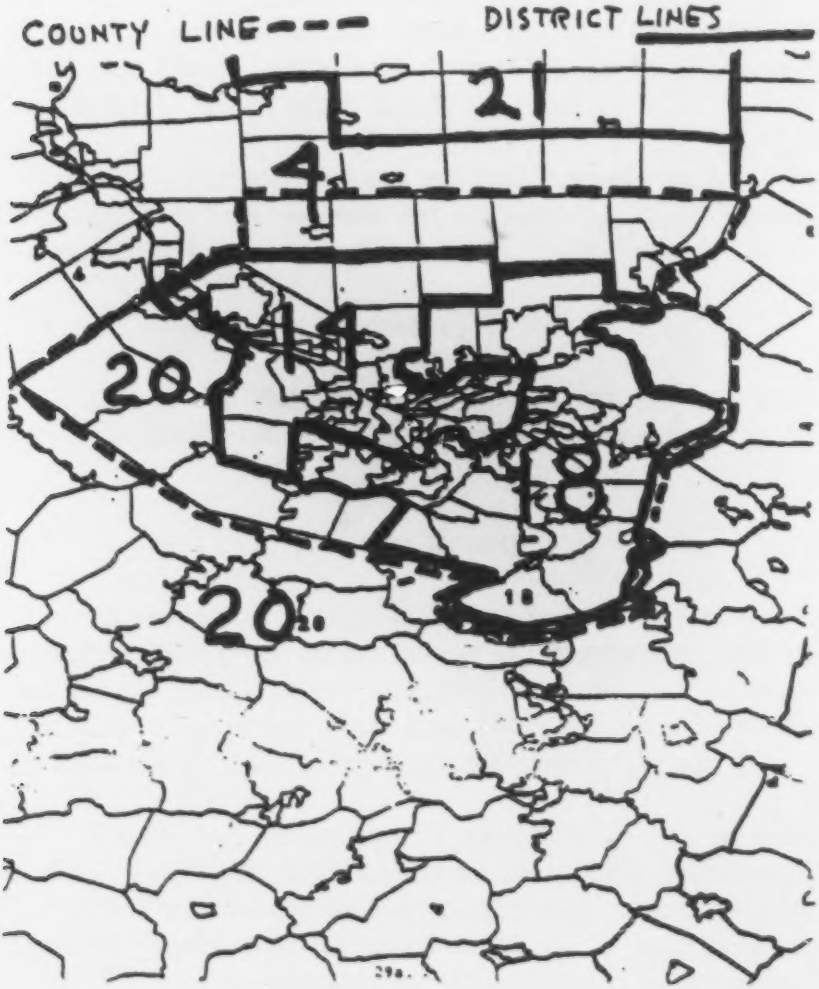
However, the Plaintiffs' Plans 1 and 2 encounter a challenge in their proposed disposition of Congressional Districts Fourteen and Eighteen in Allegheny County and in areas surrounding it, a portion of the state where the most substantial population decline has occurred over the previous decade.

Because of the anticipated retirement of Congressman Gaydos in the Twentieth Congressional District, the repositioning of a portion of that district has loomed large in reducing the number of Pennsylvania districts from 23 to 21. Accusations of partisanship have been directed by various parties at each other.

The issue requires graphic illustration. On the following two pages are shown proposals for Pittsburgh and Allegheny

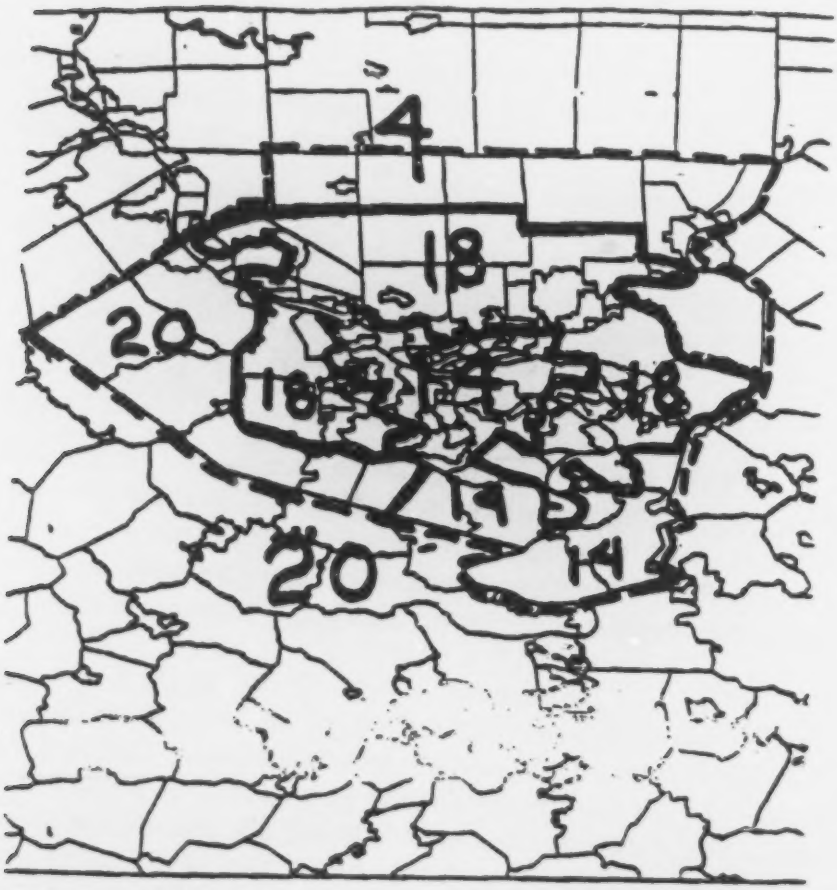
County. The first map following is that proposed by Plaintiffs' Plan 2. The second map following is the same area as it appears in Plaintiffs' Plan 3, the plan which the plaintiffs withdrew during the hearings.

PLAINTIFFS' PLAN 2



BEST AVAILA

PLAINTIFFS' PLAN 3



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(26) The City of Pittsburgh has been, and is proposed by all to remain entirely within the Fourteenth Congressional District.

(27) The City of Pittsburgh is surrounded by suburbs on all sides, with suburbs in the North Hills, in Sewickley Valley (in the northwest), and in Chartiers Valley, all having some community of interest. (R2B:108-110)

(28) The city has more in common with the close-in easterly suburbs and in the Monongahela Valley's former steelmaking areas than with the suburbs in the north, west and south.

Plaintiffs' Plan 3 (the second map) appears to recognize those community-of-interest factors by extending the Fourteenth District into the westerly side of the Monongahela Valley and encircling the Fourteenth District with the Eighteenth to embrace the northerly, westerly and southerly suburbs.

The result, however, is to create an Eighteenth Congressional District which in shape is almost a hollow circle with an open arch at the bottom. The present Eighteenth Congressional District also embraces the city on the north, west and south, but not quite in a configuration approximating a circle.

The configuration in Plaintiffs' Plan 2, on the first map, is visually more compact, with the Fourteenth District covering the city and part of the suburbs north and northwest of the city, while the Eighteenth District is proposed to embrace the northeasterly suburbs, the easternmost suburbs and municipalities on both sides of the Monongahela River, plus an arm extending westward to some of the suburbs due south of the city.

Neither of these proposals are models of compactness or contiguity, but in that respect, the Plaintiffs' Plans are not alone. The Loeper Plan proposes a result similar to Plaintiffs' Plan 3, and

the Murtha-McDade Plan would treat the Fourteenth District in some respects similar to Plaintiffs' Plan 3 by extending that district into the northerly suburbs.

Again, when the courts are thrust into this role, with no feasible option except to take one entire plan or the other, applying the more objective criteria of compactness and contiguity indicates acceptance of Plaintiffs' Plan 2 on that basis, as a less satisfying aspect of a plan otherwise meritorious.

CONCLUSION

The resulting recommendation, considering all of the elements reviewed above, is to advise in favor of approval of Plaintiffs' Plan 2 as (1) having a low maximum deviation, (2) consistent with minimal splitting of precincts, (3) achieving an enlarged number of two congressional districts with a majority African-American population and (4) coming closest to implementing the community-of-interest factors in those regions across the state which have identified them.

REVISED ELECTION CALENDAR RECOMMENDATIONS

Reference is made to Memorandum of Respondents, filed on behalf of the Secretary of the Commonwealth and the Election Commissioner, to recommend suggested revisions in the election calendar resulting from this litigation (and also from the separate case involving appeals to the Supreme Court from the Reapportionment Commission).

Noted and recommended for adoption by the Supreme Court is the Secretary's recommendation that the calendar for electing delegates and alternate delegates to the national conventions be revised along with the congressional election calendar because of their related nature.

All of the proposals of the Secretary are hereby recommended for consideration by the Supreme Court, with the exception of the proposed dates for the Commonwealth Court's latest hearing and deadline for filing that court's decisions on objections to nominating petitions.

The Election Code limitation for judicial review of such objections, 25 P.S. §2937, has been held to be directory, not mandatory. In Re Moore, 447 Pa. 526, 291 A.2d 531 (1972).

The development of objections to nominating petitions, usually involving scrutiny of numerous signatures, is time-consuming. Nevertheless, Commonwealth Court, following a Friday, March 13, deadline for filing nominating petitions, would propose to convene hearings on objections promptly on Monday, March 16, before the proposed March 19 deadline for filing such objections.

With Thursday, March 19, as the last day for filing objections, as the Secretary recommends, Commonwealth Court should also have the week of March 23-27 to conclude all hearings.

And the latest day for the filing of the court's decisions, pursuant to those hearings, could be the following Monday, March 30.

Hence, the period from April 1 through April 28 would remain for the important administrative aspects of the election process to proceed.

Of course, if nominating petition objection cases could possibly be concluded sooner than the recommended dates, the Commonwealth Court, being experienced in such litigation, would certainly strive to do so.

Accordingly, a recommended revised election calendar for Congress and delegates to national conventions is appended hereto as Appendix B.

The Secretary has also recommended a revised schedule for elections for Senator and Representative in the General Assembly, appended hereto as Appendix C.

Although that election schedule is not involved in this case, coordination of the congressional election schedule with it would be desirable.

For Commonwealth Court review of objections to nominating petitions for state legislative offices, there is recommended the same period, with hearings to be concluded not later than March 27 and decisions to be filed not later than Monday, March 30. The last such decision probably could be filed substantially sooner because of the earlier March 6 deadline which the Supreme Court has set for filing nominating petitions for legislative office.

FORM OF ORDER

A proposed form of order follows.

Respectfully submitted,

/s/ David W. Craig
DAVID W. CRAIG, President Judge

RECOMMENDED FORM OF ORDER

NOW, , 1992, pursuant to hearing held upon complaint, it is hereby ORDERED as follows:

1. Section 1801-A of the Election Code, Act of June 3, 1937, P.L. 1333, added March 3, 1982, P.L. 127, §2, 25 P.S. §3571, is hereby declared unconstitutional and its implementation for the purpose of conducting elections to the office of Representative in the United States Congress is hereby permanently enjoined.

2. Such elections, in the primary and general elections in the years 1992, 1994, 1996, 1998 and 2000 shall be conducted in accordance with the Congressional Election Districts described in Appendix A, attached to and hereby made part of this Order, and hereby adopted as the apportionment of the Commonwealth into twenty-one (21) Congressional Districts until the same shall be lawfully changed.

3. The schedule for the primary elections to be held April 28, 1992, for the election of Representatives to the United States Congress and for Delegates and Alternate Delegates to National Conventions, shall be conducted by the Secretary of the Commonwealth and by all election officers within the Commonwealth in accordance with the Revised Election Calendar attached to this Order as Appendix B, and hereby made part hereof, to provide for an orderly election process.

4. In addition, the Secretary of the Commonwealth shall, as soon as possible, publish in the Pennsylvania Bulletin and through news media, by description and, if feasible, by maps, the Congressional Districts hereby adopted in Appendix A.

5. The members of Congress now in office shall continue in the office until expiration of their respective terms.

6. Vacancies now existing or happening after the entry of this Order and before the commencement of the terms of the members elected at the election of 1992 shall be filled for the unexpired terms from the districts formerly prescribed in Section 1801-A of the Election Code, Act of June 3, 1937, P.L. 1333, added March 3, 1982, P.L. 127, §2, 25 P.S. §3571.

7. In the event any municipality or part thereof should be omitted in the description of congressional districts in Appendix A, the municipality or part thereof shall be included as a part of the congressional district which completely surrounds it. Should any omitted municipality or part thereof be completely surrounded by one congressional district, it shall become a part of that congressional district to which it is contiguous, or if there are two or more such contiguous districts, it shall become a part of that congressional district contiguous thereto which has the least population.

CRT 2
PLAINTIFFS' PROPOSED
CONGRESSIONAL PLAN

APPENDIX A

LEGISLATIVE DATA PROCESSING CENTER
COMPOSITE LISTING
OF
CONGRESSIONAL DISTRICTS

DISTRICT NUMBER	DESCRIPTION
Dist. 01	DELAWARE and PHILADELPHIA Counties: Part of DELAWARE County consisting of the CITY of Chester (Excluding Blocks 201, 207, 208 of 1990 Census Tract 4046) and the TOWNSHIPS of Darby, Ridley (Blocks 903 and 919 of 1990 Census Tract 4041.03) and Tinicum and the BOROUGHS of Colwyn, Eddystone, Folcroft and Glenolden and Part of PHILADELPHIA County consisting of the CITY of Philadelphia (PART, Wards 01, 02 [PART, Divisions 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 26], 05 [PART, Divisions 02, 03, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 17, 20, 22 and 23], 07, 10, 11, 12, 13, 14, 16, 17, 19, 20, 26, 30, 32, 36 [PART, Divisions 29, 35 and 37], 37, 39, 40, 43, 47, 48 [PART, Divisions 01, 08, 12, 13, 14, 15 and 17] and 49). Total population: 565,802
Dist. 02	DELAWARE and PHILADELPHIA Counties. Part of DELAWARE County consisting of the BOROUGHS of Darby, Lansdowne and Yeadon and Par. of PHILADELPHIA County consisting of

the CITY of Philadelphia (PART, Wards 03, 04, 06, 08, 09, 15, 21, 22, 24, 27, 28, 29, 34, 36 [PART, Divisions 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34, 36, 38, 39, 40 and 41], 38, 44, 46, 48 [PART, Divisions 02, 03, 04, 05, 06, 07, 09, 10, 11, 16, 18, 19, 20, 21, 22 and 23], 50, 51, 52, 59 and 60).
Total population: 565,815

Dist. 03 PHILADELPHIA County.
Part of PHILADELPHIA County consisting of the CITY of Philadelphia (PART, Wards 02 [PART, Divisions 24, 25 and 27], 05 [PART, Divisions 01, 04, 05, 16, 18, 19 and 21], 18, 23, 25, 31, 33, 35, 41, 42, 45, 53, 54, 55, 56, 57, 58, 61, 62, 63, 64, 65 and 66).
Total population: 565,775

Dist. 04 ALLEGHENY, BEAVER, BUTLER, LAWRENCE and WESTMORELAND Counties. Part of ALLEGHENY County consisting of the TOWNSHIPS of East Deer, Fawn, Frazer, Harrison, Marshall, Pine, Richland and West Deer and the BOROUGHS of Brackenridge, Bradford Woods, Cheswick, Plum and Tarentum; All of BEAVER County; Part of BUTLER County consisting of the TOWNSHIPS of Adams, Buffalo, Clinton, Cranberry, Jackson and Middlesex and the BOROUGHS of Harmony, Mars, Saxonburg, Seven Fields, Valencia and Zelienople; All of LAWRENCE County and Part of WESTMORELAND County consisting of the CITIES of Arnold, Jeannette, Lower Burrell and New Kensington and the TOWNSHIPS of Allegheny, North Huntingdon, Penn, Salem, Upper Burrell and Washington and the BOROUGHS of

Delmont, East Vandergrift, Export, Hyde Park, Irwin, Manor, Murrysville, North Irwin, Penn, Trafford (Westmoreland County Portion) and Vandergrift.
Total population: 565,792

Dist. 05 ARMSTRONG, CAMERON, CENTRE, CLARION, CLEARFIELD, CLINTON, CRAWFORD, ELK, FOREST, JEFFERSON, LYCOMING, MCKEAN, POTTER, TIOGA, UNION, VENANGO and WARREN Counties.
Part of ARMSTRONG County consisting of the TOWNSHIP of Madison; All of CAMERON County; Part of CENTRE County consisting of the TOWNSHIPS of Benner, Boggs, College, Curtin, Ferguson, Gregg, Haines, Harris, Howard, Huston, Liberty, Marion, Miles, Patton, Penn, Potter, Spring and Walker and the BOROUGHS of Bellefonte, Centre Hall, Howard, Milesburg, Millheim and State College; Part of CLARION County consisting of the TOWNSHIPS of Ashland, Beaver, Brady, Clarion, Elk, Farmington, Highland, Knox, Licking, Limestone, Madison, Millcreek, Monroe, Paint, Perry, Piney, Porter, Red Bank, Richland, Salem, Toby and Washington and the BOROUGHS of Callensburg, Clarion, East Brady, Foxburg, Hawthorn, Knox, Rimersburg, Shippenville, Sligo, St. Petersburg and Strattanville; Part of CLEARFIELD County consisting of the township of Falls Creek; All of CLINTON County, Part of CRAWFORD County consisting of the CITY of Titusville and the TOWNSHIPS of Athens, Bloomfield, East Mead, Oil Creek, Randolph, Rome, Sparta, Steuben, Troy and Wayne and the BOROUGHS of Centerville, Cochranton, Hydetown, Spartansburg, Townville; All of ELK County; All of FOREST County; All

of JEFFERSON County; Part of LYCOMING County consisting of the TOWNSHIPS of Anthony, Bastress, Brown, Cogan House, Cummings, Limestone, McHenry, Mifflin, Nippenose, Piatt, Pine, Porter, Susquehanna, Washington and Watson and the BOROUGHS of Jersey Shore and Salladasburg; All of MCKEAN County; All of POTTER County; All of TIOGA County; All of UNION County; All of VENANGO County and All of WARREN County.
Total population: 565,813

Dist. 06 — BERKS, MONTGOMERY, NORTHUMBERLAND and SCHUYLKILL Counties. All of BERKS County; Part of MONTGOMERY County consisting of the TOWNSHIPS of Upper Pottsgrove and West Pottsgrove and the BOROUGH of Pottstown (PART, Districts 01, 02, 03, 04, 05 and 07); Part of NORTHUMBERLAND County consisting of the CITY of Sunbury and the TOWNSHIPS of Delaware, East Chillisquaque, Jackson, Jordan, Little Mahanoy, Lower Augusta, Lower Mahanoy, Point, Rockefeller, Turbot, Upper Augusta, Upper Mahanoy and West Chillisquaque and the BOROUGHS of Herndon, McEwensville, Milton, Northumberland, Riverside, Snydertown and Watsontown and All of SCHUYLKILL County.
Total population: 565,786

Dist. 07 — CHESTER, DELAWARE and MONTGOMERY Counties.
Part of CHESTER County consisting of the TOWNSHIPS of Charlestown, East Pikeland, East Whiteland, Easttown, Schuylkill, Tredyffrin, West Pikeland, West Vincent and Willistown and the BOROUGHS of Malvern, Phoenixville and Spring

City; Part of DELAWARE County consisting of the CITY of Chester (Blocks 201, 207, 208 of 1990 Census Tract 4046) and the TOWNSHIPS of Aston, Bethel, Birmingham, Chester, Concord, Edgemont, Haverford, Lower Chichester, Marple, Middletown, Nether Providence, Newtown, Radnor, Ridley (Excluding Blocks 903 and 919 of 1990 Census Tract 4041.03), Springfield, Thornbury, Upper Chichester, Upper Darby and Upper Providence and the BOROUGHS of Aldan, Brookhaven, Chester Heights, Clifton Heights, Collingdale, East Lansdowne, Marcus Hook, Media, Millbourne, Morton, Norwood, Parkside, Prospect Park, Ridley Park, Rose Valley, Rutledge, Sharon Hill, Swarthmore, Trainer and Upland and Part of MONTGOMERY County consisting of the TOWNSHIP of Upper Merion (Excluding Block 213 of 1990 Census Tract 2059.04) and the BOROUGHS of Bridgeport and Royersford.
Total population: 565,754

Dist. 08 — BUCKS and MONTGOMERY Counties.
All of BUCKS County and Part of MONTGOMERY County consisting of the TOWNSHIPS of Horsham and Lower Moreland (PART, District 04).
Total population: 565,787

Dist. 09 — BEDFORD, BLAIR, CENTRE, CLEARFIELD, FRANKLIN, FULTON, HUNTINGDON, JUNIATA, MIFFLIN, PERRY and SNYDER Counties. All of BEDFORD County; All of BLAIR County; Part of CENTRE County consisting of the TOWNSHIPS of Burnside, Halfmoon, Rush, Snow Shoe, Taylor, Union and Worth and the BOROUGHS of Philipsburg, Port Matilda, Snow Shoe, South Philipsburg and

Unionville; All of CLEARFIELD County except the TOWNSHIP of Falls Creek; All of FRANKLIN County; All of FULTON County; All of HUNTINGDON County; All of JUNIATA County; All of MIFFLIN County; Part of PERRY County consisting of the TOWNSHIPS of Centre, Jackson, North East Madison, Saville, South West Madison, Spring, Toboyne, Tuscarora and Tyrone and the BOROUGHS of Blain, Bloomfield and Landisburg and All of SNYDER County.
Total population: 565,803

Dist. 10 BRADFORD, LACKAWANNA, LYCOMING, MONROE, PIKE, SULLIVAN, SUSQUEHANNA, WAYNE and WYOMING Counties.
All of BRADFORD County; All of LACKAWANNA County; Part of LYCOMING County consisting of the CITY of Williamsport and the TOWNSHIPS of Armstrong, Brady, Cascade, Clinton, Eldred, Fairfield, Franklin, Gamble, Hepburn, Jackson, Jordan, Lewis, Loyalsock, Lycoming, McIntyre, McNett, Mill Creek, Moreland, Muncy, Muncy Creek, Old Lycoming, Penn, Plunketts Creek, Shrewsbury, Upper Fairfield, Wolf and Woodward and the BOROUGHS of Duboistown, Hughesville, Montgomery, Montoursville, Muncy, Picture Rocks and South Williamsport; Part of MONROE County consisting of the TOWNSHIPS of Barrett, Coolbaugh, Jackson, Middle Smithfield, Paradise, Pocono, Price and Smithfield and the BOROUGHS of Delaware Water Gap, East Stroudsburg (PART, Districts 02 and 03) and Mt. Pocono; All of PIKE County; All of SULLIVAN County; All of SUSQUEHANNA County; All of WAYNE County and All of WYOMING County.
Total population: 565,796

Dist. 11

CARBON, COLUMBIA, LUZERNE, MONROE, MONTOUR and NORTHUMBERLAND Counties. All of CARBON County; All of COLUMBIA County; All of LUZERNE County; Part of MONROE County consisting of the TOWNSHIPS of Chestnuthill, Eldred, Hamilton, Polk, Ross, Stroud, Tobyhanna and Tunkhannock and the BOROUGHS of East Stroudsburg (PART, Districts 01, 04, 05 and 06) and Stroudsburg; All of MONTOUR County and Part of NORTHUMBERLAND County consisting of the CITY of Shamokin and the TOWNSHIPS of Coal, East Cameron, Lewis, Mt. Carmel, Ralpho, Rush, Shamokin, Washington, West Cameron and Zerbe and the BOROUGHS of Kulpmont, Marion Heights, Mt. Carmel and Turbotville.
Total population: 565,798

Dist. 12

ARMSTRONG, CAMBRIA, CLARION, FAYETTE, INDIANA, SOMERSET and WESTMORELAND Counties.
Part of ARMSTRONG County consisting of the TOWNSHIPS of Bethel, Boggs, Bradys Bend, Burrell, Cadogan, Cowanshannock, East Franklin, Gilpin, Hovey, Kiskiminetas, Kittanning, Mahoning, Manor, North Buffalo, Parks, Perry, Pine, Plumcreek, Rayburn, Redbank, South Bend, South Buffalo, Sugarcreek, Valley, Washington, Wayne and West Franklin and the BOROUGHS of Apollo, Applewold, Atwood, Dayton, Elderton, Ford City, Ford Cliff, Freeport, Kittanning, Leechburg, Manorville, North Apollo, Parker City, Rural Valley, South Bethlehem, West Kittanning and Worthington; All of CAMBRIA County; Part of CLARION County consisting of the BOROUGH of New Bethlehem; Part of FAYETTE County consisting of the CITY of Connellsville

and the TOWNSHIPS of Connellsville, Dunbar, Georges, Henry Clay, North Union, Springfield, Stewart and Wharton and the BOROUGHS of Dunbar, Fairchance, Markleysburg, Ohiopyle, Smithfield, South Connellsville and Vanderbilt; All of INDIANA County; All of SOMERSET County and Part of WESTMORELAND County consisting of the TOWNSHIPS of Bell, Cook, Derry, Donegal, East Huntingdon, Fairfield, Ligonier, Loyalhanna, Mt. Pleasant, St. Clair and Unity and the BOROUGHS of Avonmore, Bolivar, Derry, Donegal, Latrobe, Laurel Mountain, Ligonier, Mt. Pleasant, New Alexandria, New Florence, Oklahoma, Scottdale, Seward, West Leechburg and Youngstown.
Total population: 565,794

Dist. 13 MONTGOMERY County.
Part of MONTGOMERY County consisting of the TOWNSHIPS of Abington, Cheltenham, East Norriton, Franconia, Hatfield, Limerick, Lower Frederick, Lower Gwynedd, Lower Merion, Lower Moreland (PART, Districts 01, 02, 03, 05 and 06), Lower Pottsgrove, Lower Providence, Lower Salford, Marlborough, Montgomery, Perkiomen, Plymouth, Salford, Skippack, Springfield, Towamencin, Upper Dublin, Upper Gwynedd, Upper Merion (Block 213 of 1990 Census Tract 2059.04), Upper Moreland, Upper Providence, Upper Salford, West Norriton, Whitemarsh, Whitpain and Worcester and the BOROUGHS of Ambler, Bryn Athyn, Collegeville, Conshohocken, Hatboro, Hatfield, Jenkintown, Lansdale, Narberth, Norristown, North Wales, Pottstown (PART, District 06), Rockledge, Schwenksville, Souderton, Telford (Montgomery County Portion), Trappe and West Conshohocken.

Total population: 565,767

Dist. 14 ALLEGHENY County.
Part of ALLEGHENY County consisting of the CITY of Pittsburgh and the TOWNSHIPS of Aleppo, Collier, Hampton, Kennedy, Kilbuck, Leet, McCandless, Neville, Ohio, Robinson, Ross and Stowe and the BOROUGHS of Avalon, Bell Acres, Bellevue, Ben Avon, Ben Avon Heights, Crafton, Edgewood, Emsworth, Franklin Park, Green Tree, Homestead, Ingram, Leetsdale, McKees Rocks, Mt. Oliver, Pennsbury Village, Rosslyn Farms, Sewickley Heights, Sewickley Hills, Thornburg and West View.
Total population: 565,787

Dist. 15 LEHIGH, MONTGOMERY and NORTHAMPTON Counties.
All of LEHIGH County; Part of MONTGOMERY County consisting of the TOWNSHIPS of Douglass, New Hanover, Upper Frederick and Upper Hanover and the BOROUGHS of East Greenville, Green Lane, Pennsburg and Red Hill and All of NORTHAMPTON County.
Total population: 565,810

Dist. 16 CHESTER and LANCASTER Counties.
Part of CHESTER County consisting of the CITY of Coatesville and the TOWNSHIPS of Birmingham, Caln, East Bradford, East Brandywine, East Caln, East Coventry, East Fallowfield, East Goshen, East Marlborough, East Nantmeal, East Nottingham, East Vincent, Elk, Franklin, Highland, Honeybrook, Kennett, London Britain, London Grove, Londonderry, Lower Oxford, New Garden, New London, Newlin, North Coventry, Penn, Pennsbury, Pocopson, Sadsbury,

South Coventry, Thornbury, Upper Oxford, Upper Uwchlan, Uwchlan, Valley, Wallace, Warwick, West Bradford, West Brandywine, West Caln, West Fallowfield, West Goshen, West Marlborough, West Nantmeal, West Nottingham, West Sadsbury, West Whiteland and Westtown and the BOROUGHS of Atglen, Avondale, Downingtown, Elverson, Honey Brook, Kennett Square, Modena, Oxford, Parkesburg, South Coatesville, West Chester and West Grove and Part of LANCASTER County consisting of the CITY of Lancaster and the TOWNSHIPS of Bart, Brecknock, Caernarvon, Colerain, Drumore, Earl, East Cocalico, East Drumore, East Earl, East Hempfield (PART, Districts Barrcrest (1990), Centerville (1990), Cherry Hill (1990), Chestnut Ridge (1990), Friendly (1990), Golden Acres (1990), Kings (1990), Landisville (1990), Petersburg (1990), Pleasant View (1990) and Rohrerstown (1990), East Lampeter, Eden, Fulton, Lancaster, Leacock, Little Britain, Manheim, Martic, Paradise, Pequea, Providence, Sadsbury, Salisbury, Strasburg, Upper Leacock, Warwick, West Cocalico, West Earl and West Lampeter and the BOROUGHS of Adamstown (Lancaster County Portion), Christiana, Denver, East Petersburg, Litiz, Millersville, New Holland, Quarryville, Strasburg and Terre Hill.
Total population: 565,804

Dist. 17 CUMBERLAND, DAUPHIN, LANCASTER, LEBANON and PERRY Counties.
Part of CUMBERLAND County consisting of the TOWNSHIPS of East Pennsboro, Hampden (PART, Precincts 02a, 02b, 03, 04 and 05) and Silver Spring and the BOROUGHS of

Mechanicsburg and Shiremanstown; All of DAUPHIN County; Part of LANCASTER County consisting of the TOWNSHIPS of Clay, Conestoga, Conoy, East Donegal, East Hempfield (PART, Districts Hempland (1990), Indian Springs (1990), Millcreek (1990) and Scotland (1990)), Elizabeth, Ephrata, Manor, Mt. Joy, Penn, Rapho, West Donegal and West Hempfield and the BOROUGHS of Akron, Columbia, Elizabethtown, Ephrata, Manheim, Marietta, Mountville and Mt. Joy; All of LEBANON County and Part of PERRY County consisting of the TOWNSHIPS of Buffalo, Carroll, Greenwood, Howe, Juniata, Liverpool, Miller, Oliver, Penn, Rye, Watts and Wheatfield and the BOROUGHS of Duncannon, Liverpool, Marysville, Millerstown, New Buffalo and Newport.

Total population: 565,817

Dist. 18

ALLEGHENY County.

Part of ALLEGHENY County consisting of the CITIES of Clairton, Duquesne and McKeesport and the TOWNSHIPS of Baldwin, Elizabeth, Forward, Harmar, Indiana, Mt. Lebanon, North Versailles, O'Hara, Penn Hills, Reserve, Scott, Shaler, South Park, South Versailles, Springdale and Wilkins and the BOROUGHS of Aspinwall, Baldwin, Blawnox, Braddock, Braddock Hills, Brentwood, Carnegie, Castle Shannon, Chalfant, Churchill, Dormont, Dravosburg, East McKeesport, East Pittsburgh, Elizabeth, Etna, Forest Hills, Fox Chapel, Glassport, Heidelberg, Jefferson, Liberty, Lincoln, Millvale, Monroeville, Munhall, North Braddock, Oakmont, Pitcairn, Pleasant Hills, Port Vue, Rankin, Sharpsburg, Springdale, Swissvale, Trafford (Allegheny County Portion), Turtle Creek, Verona, Versailles, Wall, West Elizabeth, West

Homestead, West Mifflin, Whitaker, White Oak, Whitehall, Wilkinsburg and Wilmerding.
Total population: 565,781

Dist. 19 — ADAMS, CUMBERLAND and YORK Counties.
All of ADAMS County; Part of CUMBERLAND County consisting of the TOWNSHIPS of Cooke, Dickinson, Hampden (PART, Precincts 01 North and 01 South), Hopewell, Lower Allen, Lower Frankford, Lower Mifflin, Middlesex, Monroe, North Middleton, North Newton, Penn, Shippensburg, South Middleton, South Newton, Southampton, Upper Allen, Upper Frankford, Upper Mifflin and West Pennsboro and the BOROUGHS of Camp Hill, Carlisle, Lemoyne, Mt. Holly Springs, New Cumberland, Newburg, Newville, Shippensburg (Cumberland County Portion), West Fairview and Wormleysburg and All of YORK County.
Total population: 565,779

Dist. 20 — ALLEGHENY, FAYETTE, GREENE, WASHINGTON and WESTMORELAND Counties.
Part of ALLEGHENY County consisting of the TOWNSHIPS of Crescent, Findlay, Moon, North Fayette, South Fayette and Upper St. Clair and the BOROUGHS of Bethel Park, Bridgeville, Coraopolis, Edgeworth, Glenfield, Haysville, McDonald (Allegheny County Portion), Oakdale, Osborne and Sewickley; Part of FAYETTE County consisting of the CITY of Uniontown and the TOWNSHIPS of Brownsville, Bullskin, Franklin, German, Jefferson, Lower Tyrone, Luzerne, Menallen, Nicholson, Perry, Redstone, Saltlick, South Union, Springhill, Upper Tyrone and Washington and the BOROUGHS of Belle Vernon,

Brownsville, Dawson, Everson, Fayette City, Masontown, Newell, Perryopolis and Point Marion; All of GREENE County; All of WASHINGTON County and Part of WESTMORELAND County consisting of the CITIES of Greensburg and Monessen and the TOWNSHIPS of Hempfield, Rostraver, Sewickley and South Huntingdon and the BOROUGHS of Adamsburg, Arona, Hunker, Madison, New Stanton, North Belle Vernon, Smithton, South Greensburg, Southwest Greensburg, Sutersville, West Newton and Youngwood.

Total population: 565,815

Dist. 21

BUTLER, CRAWFORD, ERIE and MERCER Counties.

Part of BUTLER County consisting of the CITY of Butler and the TOWNSHIPS of Allegheny, Brady, Butler, Center, Cherry, Clay, Clearfield, Concord, Connoquenessing, Donegal, Fairview, Forward, Franklin, Jefferson, Lancaster, Marion, Mercer, Muddycreek, Oakland, Parker, Penn, Slippery Rock, Summit, Venango, Washington, Winfield and Worth and the BOROUGHS of Bruin, Callery, Cherry Valley, Chicora, Connoquenessing, East Butler, Eau Claire, Evans City, Fairview, Harrisville, Karns City, Petrolia, Portersville, Prospect, Slippery Rock, West Liberty and West Sunbury; Part of CRAWFORD County consisting of the CITY of Meadville and the TOWNSHIPS of Beaver, Cambridge, Conneaut, Cussewago, East Fairfield, East Fallowfield, Fairfield, Greenwood, Hayfield, North Shenango, Pine, Richmond, Rockdale, Sadsbury, South Shenango, Spring, Summerhill, Summit, Union, Venango, Vernon, West Fallowfield, West Mead, West Shenango and Woodcock and the BOROUGHS of Blooming

Valley, Cambridge Springs, Conneaut Lake, Conneautville, Linesville, Saegertown, Springboro, Venango and Woodcock; All of ERIE County and All of MERCER County.
Total population: 565,802

Population of all districts: 11,881,643

APPENDIX B

PROPOSED REVISED ELECTION CALENDAR FOR REPRESENTATIVE IN UNITED STATES CONGRESS AND DELEGATE AND ALTERNATE DELEGATE TO NATIONAL CONVENTIONS

Date of Supreme Court's Final Order in Mellow v. Mitchell, No. 7 M.D. Misc. Dkt. 1992	First legal day to circulate and file nomination petitions
Within 24 hours after date of Supreme Court's final order	Secretary of the Commonwealth will send to the county boards of elections a written notice announcing that candidates are to be nominated at the April 28, 1992 primary for the office of Representative in Congress
Within 24 hours after date that political parties have filed their apportionment of delegates and alternate delegates among the congressional districts	Secretary of the Commonwealth will send to the county boards of elections a written notice announcing that candidates are to be elected at the April 28, 1992 primary for the party offices of Delegate and Alternate Delegate to the National conventions of the political parties and designating the number of such offices to be elected in each congressional district

No later than 7 days after Supreme Court's Final Order in Mellow	The county boards of elections will publish a notice in newspapers that nominations of candidates for Representative in Congress will be made and that elections of persons to the party offices of Delegate and Alternate Delegate to National conventions of the political parties will occur at the April 28, 1992 General Primary, such notice to specify that the Court has established a deadline of March 13, 1992 by which nomination petitions for such offices must be filed
March 13	Last day to circulate and file nomination petitions
March 14	First legal day to circulate nomination papers nominating independent candidates of political bodies or candidates of minor political parties
March 16	First legal day to file nomination papers nominating independent candidates of political bodies or candidates of minor political parties

March 16	Secretary of the Commonwealth will transmit to each county board of elections a list of all candidates for Representative in Congress and Delegate or Alternate Delegate to National conventions who have filed nomination petitions with her and who are not known to have withdrawn or been disqualified
March 16	The county boards of elections will deliver or mail to qualified electors who previously have been sent special write-in absentee ballots an additional list containing the names of all candidates for Representative in Congress or Delegate or Alternate Delegate to National Conventions who have been named in nomination petitions filed with the Secretary
March 19	Last day to file objections to nomination petitions
March 23	Last day for candidates who have filed nomination petitions to withdraw
March 27	Last day, if possible, that may be fixed by the Commonwealth Court for hearings on objections that have been filed to nomination petitions

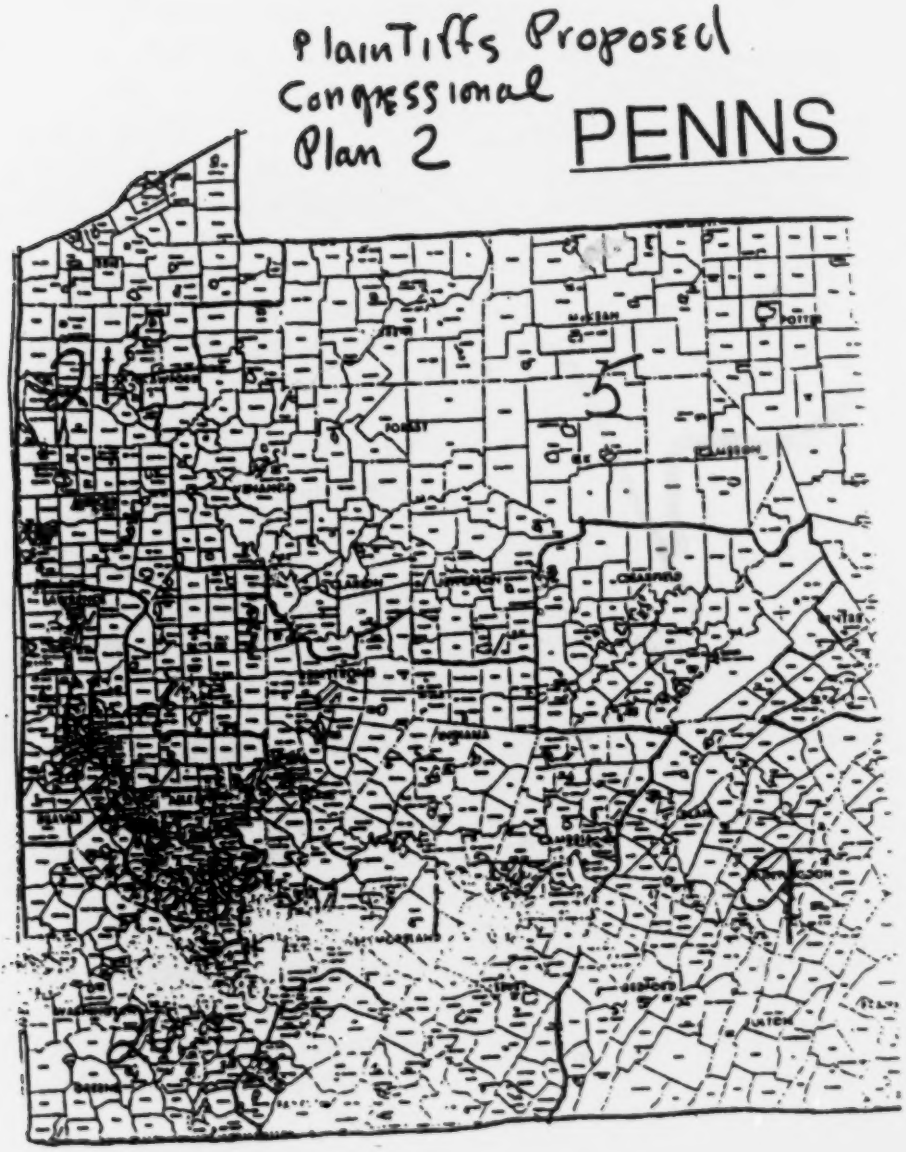
March 30	Last day, if possible, for Commonwealth Court to render decisions in cases involving objections to nomination petitions

APPENDIX C

REVISED PRIMARY ELECTION CALENDAR FOR SENATOR AND REPRESENTATIVE IN THE GENERAL ASSEMBLY

March 6	Last day to circulate and file nomination petitions
March 6	Last day for candidates to file Statements of Financial Interests with the State Ethics Commission
March 13	Last day to file objections to nomination petitions
March 23	Last day for candidates who have filed nomination petitions for the primary election to withdraw
March 27	Last day, if possible, that may be fixed by the Commonwealth Court for hearings on objections that have been filed to nomination petitions
March 30	Last day, if possible, for Commonwealth Court to render decisions in cases involving objections to nomination petitions

MAP



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MAP

Plaintiffs Proposed CRT 2
Congressional Plan 2

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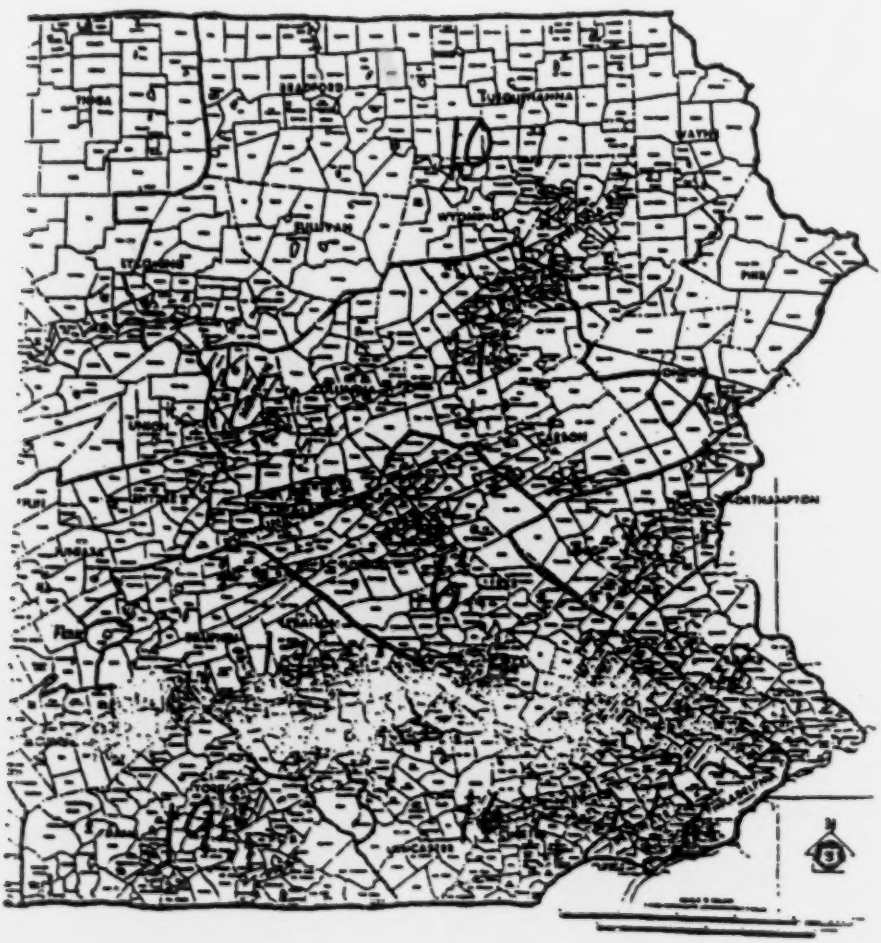

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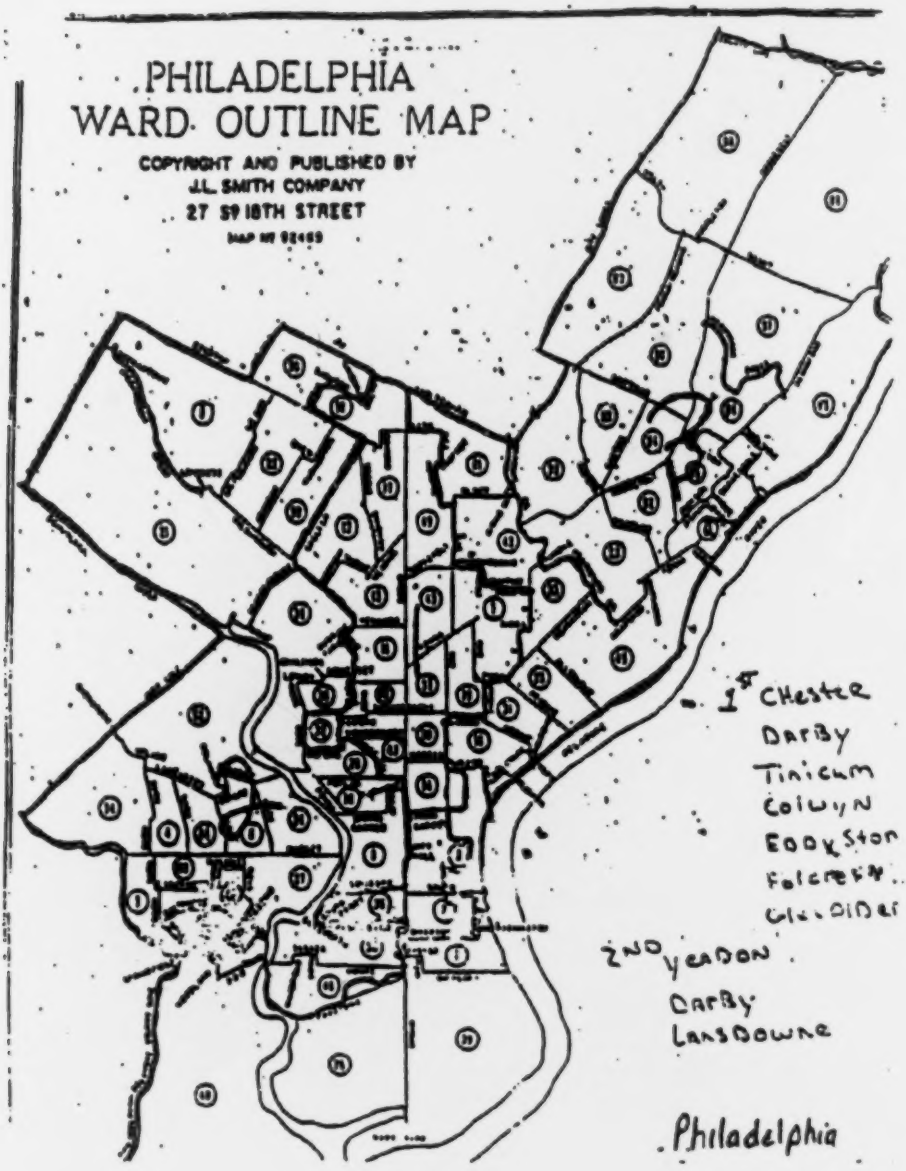

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APPENDIX "B"

J-57-1992

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

ROBERT J. MELLOW, Senator, 22nd District, J. WILLIAM LINCOLN, Senator, 32nd District, LEONARD J. BODACK, Senator, 38th District, MICHAEL J. O'PAKE, Senator, 11th District, PATRICK J. STAPLETON, Senator, 41st District, JEANETTE F. REIBMAN, Senator, 18th District, VINCENT J. FUMO, Senator, 1st District, and H. CRAIG LEWIS, Senator, 6th District, Individually and in their official capacities,	:	No. 7 M.D. Misc. Docket
Appellants	:	
v.	:	
BRENDA K. MITCHELL, Acting Secretary of the Commonwealth, and WILLIAM BOEHM, Commissioner of the Bureau of Commissions, Elections, and Legislation, Department of State, in their official capacities only,	:	
Appellees	:	ARGUED: March 7, 1992

ORDER

PER CURIAM

AND NOW, this 10th day of March, 1992, pursuant to hearing held upon complaint, it is hereby ORDERED as follows:

1. The Petition to Intervene filed on behalf of State Senator James C. Greenwood, Andrew L. Warren, Mark S. Schweiker, and Sandra A. Miller is granted. The Petition of Edward J. Wilkes, Jr., Barbara Frailey, William A. Wall, William M. Keim, III, Justus C. Barber, Patricia Anne Buard, and Russell U. McLaughlin for Leave to Intervene is granted.

2. The exception to President Judge David W. Craig's Findings, Recommended Decision, and Form of Order filed in this matter are dismissed.

3. Section 1801-A of the Election Code, Act of June 3, 1937, P.L. 1333, added March 3, 1982, P.L. 127, §2, 25 P.S. §3571, is hereby declared unconstitutional and its implementation for the purpose of conducting elections to the office of Representative in the United State Congress is hereby permanently enjoined.

4. Such elections, in the primary and general elections in the years 1992, 1994, 1996, 1998 and 2000 shall be conducted in accordance with the Congressional Election Districts described in Appendix A, attached to and hereby made part of this Order, and hereby adopted as the apportionment of the Commonwealth into twenty-one (21) Congressional Districts until the same shall be lawfully changed.

5. The schedule for the primary elections to be held April 28, 1992, for the election of Representatives to the United States Congress and for Delegates and Alternate Delegates to National Conventions, shall be conducted by the Secretary of the

Commonwealth and by all election officers within the Commonwealth in accordance with the Revised Election Calendar attached to this Order as Appendix B, and hereby made part hereof, to provide for an orderly election process.

6. In addition, the Secretary of the Commonwealth shall, as soon as possible, publish in the Pennsylvania Bulletin, by description and, if feasible, by maps, the Congressional Districts hereby adopted in Appendix A.

7. The members of Congress now in office shall continue in the office until expiration of their respective terms.

8. Vacancies now existing or happening after the entry of this Order and before the commencement of the terms of the members elected at the election of 1992 shall be filled for the unexpired terms from the districts formerly prescribed in Section 1801-A of the Election Code, Act of June 3, 1937, P.L. 1333, added March 3, 1982, P.L. 127, §2, 25 P.S. §3571.

9. In the event any municipality or part thereof should be omitted in the description of congressional districts in Appendix A, the municipality or part thereof shall be included as a part of the congressional district which completely surrounds it. Should any omitted municipality or part thereof be not completely surrounded by one congressional district, it shall become a part of that congressional district to which it is contiguous, or if there are two or more such contiguous districts, it shall become a part of that congressional district contiguous thereto which has the least population.

10. All signatures to nominating petitions for candidates for Representative in the United States Congress, and candidates for Delegate and Alternate Delegate to the National conventions of the political parties obtained before the date of this Order are hereby declared to be void and invalid.

11. The two day mail notice required for the casting of lots pursuant to 25 P.S. 2875 is hereby waived.

Opinion to follow.

Mr. Chief Justice Nix, Mr. Justice Larsen and Mr. Justice McDermott did not participate in the consideration or decision of this case.

DISTRICT NUMBER	DESCRIPTION
Dist. 01	DELAWARE and PHILADELPHIA Counties. Part of DELAWARE County consisting of the CITY of Chester (Excluding Blocks 201, 207, 208 of 1990 Census Tract 4046) and the TOWNSHIPS of Darby, Ridley (Blocks 903 and 919 of 1990 Census Tract 4041.03) and Tinicum and the BOROUGHS of Colwyn, Eddystone, Folcroft and Glenolden and Part of PHILADELPHIA County consisting of the CITY of Philadelphia (PART, Wards 01, 02 [PART, Divisions 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 26], 05 [PART, Divisions 02, 03, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 17, 20, 22 and 23], 07, 10, 11, 12, 13, 14, 16, 17, 19, 20, 26, 30, 32, 36 [PART, Divisions 29, 35 and 37], 37, 39, 40, 43, 47, 48 [PART, Divisions 01, 08, 12, 13, 14, 15 and 17] and 49). Total population: 565,802
Dist. 02	DELAWARE and PHILADELPHIA Counties. Part of DELAWARE County consisting of the BOROUGHS of Darby, Lansdowne and Yeadon and Part of PHILADELPHIA County consisting of the CITY of Philadelphia (PART, Wards 03, 04, 06, 08, 09, 15, 21, 22, 24, 27, 28, 29, 34, 36 [PART, Divisions 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34, 36, 38, 39, 40 and 41], 38, 44, 46, 48 [PART, Divisions 02, 03, 04, 05, 06, 07, 09, 10, 11, 16, 18, 19, 20, 21, 22 and 23], 50, 51, 52, 59 and 60). Total population: 565,815

Dist. 03 PHILADELPHIA County.
Part of PHILADELPHIA County consisting of the CITY of Philadelphia (PART, Wards 02 [PART, Divisions 24, 25 and 27], 05 [PART, Divisions 01, 04, 05, 16, 18, 19 and 21], 18, 23, 25, 31, 33, 35, 41, 42, 45, 53, 54, 55, 56, 57, 58, 61, 62, 63, 64, 65 and 66).
Total population: 565,775

Dist. 04 ALLEGHENY, BEAVER, BUTLER, LAWRENCE and WESTMORELAND Counties. Part of ALLEGHENY County consisting of the TOWNSHIPS of East Deer, Fawn, Frazer, Harrison, Marshall, Pine, Richland and West Deer and the BOROUGHS of Brackenridge, Bradford Woods, Cheswick, Plum and Tarentum; All of BEAVER County; Part of BUTLER County consisting of the TOWNSHIPS of Adams, Buffalo, Clinton, Cranberry, Jackson and Middlesex and the BOROUGHS of Harmony, Mars, Saxonburg, Seven Fields, Valencia and Zelienople; All of LAWRENCE County and Part of WESTMORELAND County consisting of the CITIES of Arnold, Jeannette, Lower Burrell and New Kensington and the TOWNSHIPS of Allegheny, North Huntingdon, Penn, Salem, Upper Burrell and Washington and the BOROUGHS of Delmont, East Vandergrift, Export, Hyde Park, Irwin, Manor, Murrysville, North Irwin, Penn, Trafford (Westmoreland County Portion) and Vandergrift.
Total population: 565,792

Dist. 05 ARMSTRONG, CAMERON, CENTRE, CLARION, CLEARFIELD, CLINTON, CRAWFORD, ELK, FOREST, JEFFERSON,

LYCOMING, MCKEAN, POTTER, TIOGA, UNION, VENANGO and WARREN Counties.
Part of ARMSTRONG County consisting of the TOWNSHIP of Madison; All of CAMERON County; Part of CENTRE County consisting of the TOWNSHIPS of Benner, Boggs, College, Curtin, Ferguson, Gregg, Haines, Harris, Howard, Huston, Liberty, Marion, Miles, Patton, Penn, Potter, Spring and Walker and the BOROUGHS of Bellefonte, Centre Hall, Howard, Milesburg, Millheim and State College; Part of CLARION County consisting of the TOWNSHIPS of Ashland, Beaver, Brady, Clarion, Elk, Farmington, Highland, Knox, Licking, Limestone, Madison, Millcreek, Monroe, Paint, Perry, Piney, Porter, Red Bank, Richland, Salem, Toby and Washington and the BOROUGHS of Callensburg, Clarion, East Brady, Foxburg, Hawthorn, Knox, Rimersburg, Shippenville, Sligo, St. Petersburg and Strattanville; Part of CLEARFIELD County consisting of the TOWNSHIP of Falls Creek; All of CLINTON County, Part of CRAWFORD County consisting of the CITY of Titusville and the TOWNSHIPS of Athens, Bloomfield, East Mead, Oil Creek, Randolph, Rome, Sparta, Steuben, Troy and Wayne and the BOROUGHS of Centerville, Cochranton, Hydetown, Spartansburg and Townville; All of ELK County; All of FOREST County; All of JEFFERSON County; Part of LYCOMING County consisting of the TOWNSHIPS of Anthony, Bastress, Brown, Cogan House, Cummings, Limestone, McHenry, Mifflin, Nippenose, Piatt, Pine, Porter, Susquehanna, Washington and Watson and the BOROUGHS of Jersey Shore and Salladasburg; All of MCKEAN County; All of POTTER County; All of TIOGA

County; All of UNION County; All of VENANGO County and All of WARREN County.
Total population: 565,813

Dist. 06 BERKS, MONTGOMERY, NORTHUMBERLAND and SCHUYLKILL Counties.
All of BERKS County; Part of MONTGOMERY County consisting of the TOWNSHIPS of Upper Pottsgrove and West Pottsgrove and the BOROUGH of Pottstown (PART, Districts 01, 02, 03, 04, 05 and 07); Part of NORTHUMBERLAND County consisting of the CITY of Sunbury and the TOWNSHIPS of Delaware, East Chillisquaque, Jackson, Jordan, Little Mahanoy, Lower Augusta, Lower Mahanoy, Point, Rockefeller, Turbot, Upper Augusta, Upper Mahanoy and West Chillisquaque and the BOROUGHS of Herndon, McEwensville, Milton, Northumberland, Riverside, Snydertown and Watsontown and All of SCHUYLKILL County.
Total population: 565,786

Dist. 07 CHESTER, DELAWARE and MONTGOMERY Counties.
Part of CHESTER County consisting of the TOWNSHIPS of Charlestown, East Pikeland, East Whiteland, Easttown, Schuylkill, Tredyffrin, West Pikeland, West Vincent and Willistown and the BOROUGHS of Malvern, Phoenixville and Spring City; Part of DELAWARE County consisting of the CITY of Chester (Blocks 201, 207, 208 of 1990 Census Tract 4046) and the TOWNSHIPS of Aston, Bethel, Birmingham, Chester, Concord, Edgemont, Haverford, Lower Chichester, Marple, Middletown, Nether Providence, Newtown, Radnor, Ridley (Excluding Blocks 903 and 919 of 1990 Census Tract 4041.03), Springfield,

Thornbury, Upper Chichester, Upper Darby and Upper Providence and the BOROUGHS of Aldan, Brookhaven, Chester Heights, Clifton Heights, Collingdale, East Lansdowne, Marcus Hook, Media, Millbourne, Morton, Norwood, Parkside, Prospect Park, Ridley Park, Rose Valley, Rutledge, Sharon Hill, Swarthmore, Trainer and Upland and Part of MONTGOMERY County consisting of the TOWNSHIP of Upper Merion (Excluding Block 213 of 1990 Census Tract 2059.04) and the BOROUGHS of Bridgeport and Royersford.
Total population: 565,754

Dist. 08 — BUCKS and MONTGOMERY Counties.
All of BUCKS County and Part of MONTGOMERY County consisting of the TOWNSHIPS of Horsham and Lower Moreland (PART, District 04).
Total population: 565,787

Dist. 09 — BEDFORD, BLAIR, CENTRE, CLEARFIELD, FRANKLIN, FULTON, HUNTINGDON, JUNIATA, MIFFLIN, PERRY and SNYDER Counties. All of BEDFORD County; All of BLAIR County; Part of CENTRE County consisting of the TOWNSHIPS of Burnside, Halfmoon, Rush, Snow Shoe, Taylor, Union and Worth and the BOROUGHS of Philipsburg, Port Matilda, Snow Shoe, South Philipsburg and Unionville; All of CLEARFIELD County except the TOWNSHIP of Falls Creek; All of FRANKLIN County; All of FULTON County; All of HUNTINGDON County; All of JUNIATA County; All of MIFFLIN County; Part of PERRY County consisting of the TOWNSHIPS of Centre, Jackson, North East Madison, Saville, South West Madison, Spring, Toboyne, Tuscarora and Tyrone

and the BOROUGHS of Blain, Bloomfield and Landisburg and All of SNYDER County.
Total population: 565,803

Dist. 10 BRADFORD, LACKAWANNA, LYCOMING, MONROE, PIKE, SULLIVAN, SUSQUEHANNA, WAYNE and WYOMING Counties.
All of BRADFORD County; All of LACKAWANNA County; Part of LYCOMING County consisting of the CITY of Williamsport and the TOWNSHIPS of Armstrong, Brady, Cascade, Clinton, Eldred, Fairfield, Franklin, Gamble, Hepburn, Jackson, Jordan, Lewis, Loyalsock, Lycoming, McIntyre, McNett, Mill Creek, Moreland, Muncy, Muncy Creek, Old Lycoming, Penn, Plunketts Creek, Shrewsbury, Upper Fairfield, Wolf and Woodward and the BOROUGHS of Duboistown, Hughesville, Montgomery, Montoursville, Muncy, Picture Rocks and South Williamsport; Part of MONROE County consisting of the TOWNSHIPS of Barrett, Coolbaugh, Jackson, Middle Smithfield, Paradise, Pocono, Price and Smithfield and the BOROUGHS of Delaware Water Gap, East Stroudsburg (PART, Districts 02 and 03) and Mt. Pocono; All of PIKE County; All of SULLIVAN County; All of SUSQUEHANNA County; All of WAYNE County and All of WYOMING County.
Total population: 565,796

Dist. 11 CARBON, COLUMBIA, LUZERNE, MONROE, MONTOUR and NORTHUMBERLAND Counties.
All of CARBON County; All of COLUMBIA County; All of LUZERNE County; Part of MONROE County consisting of the TOWNSHIPS of Chestnuthill, Eldred, Hamilton, Polk, Ross, Stroud, Tobyhanna and Tunkhannock and the

BOROUGHS of East Stroudsburg (PART, Districts 01, 04, 05 and 06) and Stroudsburg; All of MONTOUR County and Part of NORTHUMBERLAND County consisting of the CITY of Shamokin and the TOWNSHIPS of Coal, East Cameron, Lewis, Mt. Carmel, Ralpho, Rush, Shamokin, Washington, West Cameron and Zerbe and the BOROUGHS of Kulpmont, Marion Heights, Mt. Carmel and Turbotville.
Total population: 565,798

Dist. 12

ARMSTRONG, CAMBRIA, CLARION, FAYETTE, INDIANA, SOMERSET and WESTMORELAND Counties.
Part of ARMSTRONG County consisting of the TOWNSHIPS of Bethel, Boggs, Bradys Bend, Burrell, Cadogan, Cowanshannock, East Franklin, Gilpin, Hovey, Kiskiminetas, Kittanning, Mahoning, Manor, North Buffalo, Parks, Perry, Pine, Plumcreek, Rayburn, Redbank, South Bend, South Buffalo, Sugarcreek, Valley, Washington, Wayne and West Franklin and the BOROUGHS of Apollo, Applewold, Atwood, Dayton, Elderton, Ford City, Ford Cliff, Freeport, Kittanning, Leechburg, Manorville, North Apollo, Parker City, Rural Valley, South Bethlehem, West Kittanning and Worthington; All of CAMBRIA County; Part of CLARION County consisting of the BOROUGH of New Bethlehem; Part of FAYETTE County consisting of the CITY of Connellsville and the TOWNSHIPS of Connellsville, Dunbar, Georges, Henry Clay, North Union, Springfield, Stewart and Wharton and the BOROUGHS of Dunbar, Fairchance, Markleysburg, Ohiopyle, Smithfield, South Connellsville and Vanderbilt; All of INDIANA County; All of SOMERSET County and Part of WESTMORELAND County consisting

of the TOWNSHIPS of Bell, Cook, Derry, Donegal, East Huntingdon, Fairfield, Ligonier, Loyalhanna, Mt. Pleasant, St. Clair and Unity and the BOROUGHS of Avonmore, Bolivar, Derry, Donegal, Latrobe, Laurel Mountain, Ligonier, Mt. Pleasant, New Alexandria, New Florence, Oklahoma, Scottdale, Seward, West Leechburg and Youngstown.
Total population: 565,794

Dist. 13 MONTGOMERY County.
Part of MONTGOMERY County consisting of the TOWNSHIPS of Abington, Cheltenham, East Norriton, Franconia, Hatfield, Limerick, Lower Frederick, Lower Gwynedd, Lower Merion, Lower Moreland (PART, Districts 01, 02, 03, 05 and 06), Lower Pottsgrove, Lower Providence, Lower Salford, Marlborough, Montgomery, Perkiomen, Plymouth, Salford, Skippack, Springfield, Towamencin, Upper Dublin, Upper Gwynedd, Upper Merion (Block 213 of 1990 Census Tract 2059.04), Upper Moreland, Upper Providence, Upper Salford, West Norriton, Whitemarsh, Whitpain and Worcester and the BOROUGHS of Ambler, Bryn Athyn, Collegeville, Conshohocken, Hatboro, Hatfield, Jenkintown, Lansdale, Narberth, Norristown, North Wales, Pottstown (PART, District 06), Rockledge, Schwenksville, Souderton, Telford (Montgomery County Portion), Trappe and West Conshohocken.
Total population: 565,767

Dist. 14 ALLEGHENY County.
Part of ALLEGHENY County consisting of the CITY of Pittsburgh and the TOWNSHIPS of Aleppo, Collier, Hampton, Kennedy, Kilbuck, Leet, McCandless, Neville, Ohio, Robinson, Ross

and Stowe and the BOROUGHS of Avalon, Bell Acres, Bellevue, Ben Avon, Ben Avon Heights, Crafton, Edgewood, Emsworth, Franklin Park, Green Tree, Homestead, Ingram, Leetsale, McKees Rocks, Mt. Oliver, Pennsbury Village, Rosslyn Farms, Sewickley Heights, Sewickley Hills, Thornburg and West View.
Total population: 565,787

Dist. 15 LEHIGH, MONTGOMERY and NORTHAMPTON Counties.
All of LEHIGH County; Part of MONTGOMERY County consisting of the TOWNSHIPS of Douglass, New Hanover, Upper Frederick and Upper Hanover and the BOROUGHS of East Greenville, Green Lane, Pennsburg and Red Hill and All of NORTHAMPTON County.
Total population: 565,810

Dist. 16 CHESTER and LANCASTER Counties.
Part of CHESTER County consisting of the CITY of Coatesville and the TOWNSHIPS of Birmingham, Caln, East Bradford, East Brandywine, East Caln, East Coventry, East Fallowfield, East Goshen, East Marlborough, East Nantmeal, East Nottingham, East Vincent, Elk, Franklin, Highland, Honeybrook, Kennett, London Britain, London Grove, Londonderry, Lower Oxford, New Garden, New London, Newlin, North Coventry, Penn, Pennsbury, Pocopson, Sadsbury, South Coventry, Thornbury, Upper Oxford, Upper Uwchlan, Uwchlan Valley, Wallace, Warwick, West Bradford, West Brandywine, West Caln, West Fallowfield, West Goshen, West Marlborough, West Nantmeal, West Nottingham, West Sadsbury, West Whiteland and Westtown and the BOROUGHS of Atglen, Avondale,

Downingtown, Elverson, Honey Brook, Kennett Square, Modena, Oxford, Parkesburg, South Coatesville, West Chester and West Grove and Part of LANCASTER County consisting of the CITY of Lancaster and the TOWNSHIPS of Bart, Brecknock, Caernarvon, Colerain, Drumore, Earl, East Cocalico, East Drumore, East Earl, East Hempfield (PART, Districts
Barrcrest (1990), Centerville (1990),
Cherry Hill (1990), Chestnut Ridge (1990),
Friendly (1990), Golden Acres (1990),
Kings (1990), Landisville (1990),
Petersburg (1990), Pleasant View (1990) and
Rohrerstown (1990), East Lampeter, Eden, Fulton, Lancaster, Leacock, Little Britain, Manheim, Martic, Paradise, Pequea, Providence, Sadsbury, Salisbury, Strasburg, Upper Leacock, Warwick, West Cocalico, West Earl and West Lampeter and the BOROUGHS of Adamstown (Lancaster County Portion), Christiana, Denver, East Petersburg, Litiz, Millersville, New Holland, Quarryville, Strasburg and Terre Hill.
Total population: 565,804

Dist. 17 CUMBERLAND, DAUPHIN, LANCASTER, LEBANON and PERRY Counties.
Part of CUMBERLAND County consisting of the TOWNSHIPS of East Pennsboro, Hampden (PART, Precincts 02a, 02b, 03, 04 and 05) and Silver Spring and the BOROUGHS of Mechanicsburg and Shiremanstown; All of DAUPHIN County; Part of LANCASTER County consisting of the TOWNSHIPS of Clay, Conestoga, Conoy, East Donegal, East Hempfield [PART, Districts
Hempland (1990), Indian Springs (1990),
Millcreek (1990) and Scotland (1990)],

Elizabeth, Ephrata, Manor, Mt. Joy, Penn, Rapho, West Donegal and West Hempfield and the BOROUGHS of Akron, Columbia, Elizabethtown, Ephrata, Manheim, Marietta, Mountville and Mt. Joy; All of LEBANON County and Part of PERRY County consisting of the TOWNSHIPS of Buffalo, Carroll, Greenwood, Howe, Juniata, Liverpool, Miller, Oliver, Penn, Rye, Watts and Wheatfield and the BOROUGHS of Duncannon, Liverpool, Marysville, Millerstown, New Buffalo and Newport.
Total population: 565,817

Dist. 18 ALLEGHENY County.
Part of ALLEGHENY County consisting of the CITIES of Clairton, Duquesne and McKeesport and the TOWNSHIPS of Baldwin, Elizabeth, Forward, Harmar, Indiana, Mt. Lebanon, North Versailles, O'Hara, Penn Hills, Reserve, Scott, Shaler, South Park, South Versailles, Springdale and Wilkins and the BOROUGHS of Aspinwall, Baldwin, Blawnox, Braddock, Braddock Hills, Brentwood, Carnegie, Castle Shannon, Chalfant, Churchill, Dormont, Dravosburg, East McKeesport, East Pittsburgh, Elizabeth, Etna, Forest Hills, Fox Chapel, Glassport, Heidelberg, Jefferson, Liberty, Lincoln, Millvale, Monroeville, Munhall, North Braddock, Oakmont, Pitcairn, Pleasant Hills, Port Vue, Rankin, Sharpsburg, Springdale, Swissvale, Trafford (Allegheny County Portion), Turtle Creek, Verona, Versailles, Wall, West Elizabeth, West Homestead, West Mifflin, Whitaker, White Oak, Whitehall, Wilkinsburg and Wilmerding.
Total population: 565,781

Dist. 19 ADAMS, CUMBERLAND and YORK Counties. All of ADAMS County; Part of CUMBERLAND County consisting of the TOWNSHIPS of Cooke, Dickinson, Hampden (PART, Precincts 01 North and 01 South), Hopewell, Lower Allen, Lower Frankford, Lower Mifflin, Middlesex, Monroe, North Middleton, North Newton, Penn, Shippensburg, South Middleton, South Newton, Southampton, Upper Allen, Upper Frankford, Upper Mifflin and West Pennsboro and the BOROUGHS of Camp Hill, Carlisle, Lemoyne, Mt. Holly Springs, New Cumberland, Newburg, Newville, Shippensburg (Cumberland County Portion), West Fairview and Wormleysburg and All of YORK County.
Total population: 565,779

Dist. 20 ALLEGHENY, FAYETTE, GREENE, WASHINGTON and WESTMORELAND Counties.
Part of ALLEGHENY County consisting of the TOWNSHIPS of Crescent, Findlay, Moon, North Fayette, South Fayette and Upper St. Clair and the BOROUGHS of Bethel Park, Bridgeville, Coraopolis, Edgeworth, Glenfield, Haysville, McDonald (Allegheny County Portion), Oakdale, Osborne and Sewickley; Part of FAYETTE County consisting of the CITY of Uniontown and the TOWNSHIPS of Brownsville, Bullskin, Franklin, German, Jefferson, Lower Tyrone, Luzerne, Menallen, Nicholson, Perry, Redstone, Saltlick, South Union, Springhill, Upper Tyrone and Washington and the BOROUGHS of Belle Vernon, Brownsville, Dawson, Everson, Fayette City, Masontown, Newell, Perryopolis and Point Marion; All of GREENE County; All of WASHINGTON County and Part of WESTMORELAND County

consisting of the CITIES of Greensburg and Monessen and the TOWNSHIPS of Hempfield, Rostraver, Sewickley and South Huntingdon and the BOROUGHS of Adamsburg, Arona, Hunker, Madison, New Stanton, North Belle Vernon, Smithton, South Greensburg, Southwest Greensburg, Sutersville, West Newton and Youngwood.
Total population: 565,815

Dist. 21 BUTLER, CRAWFORD, ERIE and MERCER Counties.
Part of BUTLER County consisting of the CITY of Butler and the TOWNSHIPS of Allegheny, Brady, Butler, Center, Cherry, Clay, Clearfield, Concord, Connoquenessing, Donegal, Fairview, Forward, Franklin, Jefferson, Lancaster, Marion, Mercer, Muddycreek, Oakland, Parker, Penn, Slippery Rock, Summit, Venango, Washington, Winfield and Worth and the BOROUGHS of Bruin, Callery, Cherry Valley, Chicora, Connoquenessing, East Butler, Eau Claire, Evans City, Fairview, Harrisville, Karns City, Petrolia, Portersville, Prospect, Slippery Rock, West Liberty and West Sunbury; Part of CRAWFORD County consisting of the CITY of Meadville and the TOWNSHIPS of Beaver, Cambridge, Conneaut, Cussewago, East Fairfield, East Fallowfield, Fairfield, Greenwood, Hayfield, North Shenango, Pine, Richmond, Rockdale, Sadsbury, South Shenango, Spring, Summerhill, Summit, Union, Venango, Vernon, West Fallowfield, West Mead, West Shenango and Woodcock and the BOROUGHS of Blooming Valley, Cambridge Springs, Conneaut Lake, Conneautville, Linesville, Saegertown, Springboro, Venango and Woodcock; All of ERIE County and All of MERCER County.

Total population: 565,802

Population of all districts: 11,881,643

REVISED ELECTION CALENDAR FOR REPRESENTATIVE IN UNITED STATES CONGRESS AND DELEGATE AND ALTERNATE DELEGATE TO NATIONAL CONVENTIONS

March 10	First legal day to circulate and file nomination petitions
March 11	Secretary of the Commonwealth will send to the county boards of elections a written notice announcing that candidates are to be nominated at the April 28, 1992 primary for the office of Representative in Congress
March 11	Secretary of the Commonwealth will send to the county boards of elections a written notice announcing that candidates are to be elected at the April 28, 1992 primary for the party offices of Delegate and Alternate Delegate to the National conventions of the political parties and designating the number of such offices to be elected in each congressional district

March 17	The county boards of elections will publish a notice in newspapers that nominations of candidates for Representative in Congress will be made and that elections of persons to the party offices of Delegate and Alternate Delegate to National conventions of the political parties will occur at the April 28, 1992 General Primary, such notice to specify that the Court has established a deadline of March 19, 1992 by which nomination petitions for such offices must be filed
March 19	Last day to circulate and file nomination petitions
March 20	First legal day to circulate nomination papers nominating independent candidates of political bodies or candidates of minor political parties

March 20	First legal day to file nomination papers nominating independent candidates of political bodies or candidates of minor political parties
March 20	Secretary of the Commonwealth will transmit to each county board of elections a list of all candidates for Representative in Congress and Delegate or Alternate Delegate to National conventions who have filed nomination petitions with the Secretary of the Commonwealth and who are not known to have withdrawn or been disqualified
March 23	The county boards of elections will deliver or mail to qualified electors who previously have been sent special write-in absentee ballots an additional list containing the name of all candidates for Representative in Congress or Delegate or Alternate Delegate to National conventions who have been named in nomination petitions filed with the Secretary
March 24	Last day for candidates who have filed nomination petitions to withdraw

March 25	Last day to file objections to nomination petitions
March 31	Last day that may be fixed by the Commonwealth Court for hearings on objections that have been filed to nomination petitions
April 3	Last day for Commonwealth Court to render decisions in cases involving objections to nomination petitions
May 8	Last day for acceptance of absentee ballots for all elections

APPENDIX "C"

EXCEPTIONS

A. Exceptions of F. JOSEPH LOEPER, et al.

1) Erred in enforcing an arbitrary deadline for submission of redistricting plan.

2) Finding of Fact 15 is erroneous insofar as it characterizes the proceeding involving the amended version of the Loeper Plan.

3) Erred in excluding the amended Loeper Plan for consideration.

4) Finding of Fact 16 is erroneous in that the record contains no evidence to support the findings as to party registration balance for all the listed statewide plans, except the Loeper Plan. Finding of Fact 16 is also erroneous in stating the maximum and average deviation of the Murtha-McDade Plan as well as in stating the number of precincts split by that plan as being 22 rather than 30.

5) Fails to make adequate findings regarding the protection of minority voting rights from dilution.

6) Erred in failing to make findings regarding the dilution in minority population that would be effected in Allegheny County by all statewide plans accepted for consideration.

7) Erred in the legal standard applied to the selection process. Standard used was one arguably appropriate for legislatively enacted reapportionment plans. Master should have

selected a plan that approach :d equality of population as nearly as practicable while also protecting voting rights.

8) The recommended plan by the Master has an unacceptably high deviation from equal population.

9) Erred in relying on maximum and average deviation for the selected plan.

10) Erred in recommending a plan for Allegheny County that produces a result contrary to the Findings of Fact at Nos. 27 and 28.

11) Erred in recommending the elimination of the present 5th District and in effectively eliminating the present 18th District since every other district west of the Alleghenies suffered a greater population decline.

12) Erred in <u>not</u> recommending the adoption of the amended Loeper Plan.

Intervenors request the adoption of the amended Loeper Plan or the Court to design its own plan re remand to the Master for further proceedings.

B. Exceptions of MATTHEW J. RYAN, et al.

1.) Erred in using artificial deadlines to exclude plans and amendments filed after the February 11, 1992 date.

2) Erred in excluding consideration of the Ryan-Cornell Plan first offered publicly in the House on February 11, 1992.

3) Erred in choosing a plan having an unacceptable maximum range of deviation, which dilutes minority voting strength

in District 2 in Philadelphia and District 14 in Allegheny County, fragments municipalities and is not compact nor contiguous.

4) Erred in permitting an incomplete record be made on the dilution of minority voting strength.

Joins with Loeper Exceptions Nos. 1, 2, 3, 4, 5, 7, 8, 9, 10 and 11.

5) Argues that their plan is superior to the Loeper Plan.

C. Exceptions of ROBERT W. O'DONNELL

1) Erred by ignoring constitutional requirement of using the lowest population deviation practicable in favor of a standard of "acceptability in terms of population equality."

2) Erred by treating all the submitted plans as having the same population deviation. Argues that the Plaintiffs' Plan No. 2 deviation could have been further reduced by selecting the O'Donnell Plan B.

3) Erred in interpreting and applying the federal Voting Rights Act in concluding that it is required to create minority-in-the-majority districts. Argues that the record reflects the conclusion that two black majority districts can be created.

4) Recommended plan dilutes minority voting strength in the Second Congressional District in violation of Section 2 of the Voting Rights Act.

5) Erred by equating subjective expressions of "regional interest" with constitutional requirements of population equality.

6) Erred in determining that the Murtha-McDade Plan is the only bi-partisan plan.

7) Erred in finding for a second African-American majority district in Philadelphia based on population proportions.

8) Erred by not correcting reported deviation adjustments.

D. Exceptions to EDWARD J. WILKES, JR., et al.

1) Division of Township of Upper Merion into two congressional districts violates Article I, Section 2 and the First and Fourteenth Amendments, Article I, Sections 5 and 26 of the Pennsylvania Constitution since the plan fragments the Township of Upper Merion; disenfranchises voters and interferes with voters' right to free and equal elections.

2) Upper Merion division violates the First, Fifth and Fourteenth Amendments, Article I, Section 5 of the Pennsylvania Constitution because it forces the Township to spend additional time and money to establish liaison for two separate representatives for 109 residents in a district separate from the remainder of the Township.

3) Upper Merion division violates the Fourteenth Amendment because it is not supported by a rational basis or related to any necessary governmental interest.

4) Impairs voters' rights in violation of the First and Fourteenth Amendments because the division results in unnecessary expense in conducting elections, financing and staffing campaigns and might lead to confusion in voting.

5) Erred by not considering the hardship the recommended plan would have on the Township.

E. Exceptions of Amicus Curiae, THOMAS A. FOGLIETTA, et al.

Argues for remand for a new plan which was also submitted.

F. Submission of Intervenors, JOHN P. MURTHA and JOSEPH W. McDADE

They argue:

1) The bi-partisan statewide congressional plan is constitutionally preferable to party caucus plans prepared for partisan political advantage.

2) Only the bi-partisan plan accomplishes the constitutionally-mandated minimum deviation of less than one person per district.

3) There is no evidence in the record to implicate the provisions of the Voting Rights Act as respects the present configuration of the Second Congressional District in Philadelphia.

4) The bi-partisan plan complies with the policies of the Voting Rights Act.

G. Amicus Curiae, WILLIAM H. LAMB

Argues against the splitting of Chester County in Plaintiffs' Plan No. 2.

H. Amicus Curiae, JOHN B. FULMER

Argues against the splitting of communities in Allegheny County in Plaintiffs' Plan No. 2.

IN THE COMMONWEALTH OF PENNSYLVANIA

ROBERT J. MELLOW, Senator, 22nd District et al., Plaintiffs	:	
v.	:	No. 25 M.D. 1992
BRENDA K. MITCHELL, Acting Secretary of the Commonwealth et al., Defendants	:	

ORDER

AND NOW, this 30th day of January, 1992, upon consideration of Plaintiffs' motion for a preliminary injunction, the stipulation entered into between Plaintiffs and Defendants, and following argument on the question it is hereby ordered:

1) Plaintiffs' motion for a preliminary injunction is hereby granted. The Act of June 3, 1937, P.L. 1333, as amended by the Act of March 3, 1982, P.L. 127, as amended 25 P.S. §3571, is unconstitutional as violative of the one person, one vote principle. Defendants, and any and all persons acting in concert with the Defendants, are enjoined from exercising their powers relating to the administration or supervision of congressional or district level delegate elections under the above cited statute.

2) Because the election schedule cannot commence using the districts created by 25 P.S. §3571, the implementation and enforcement of the following: the Act of April 28, 1978, P.L. 202 §2(a), as amended, 25 P.S. §2751; the Act of December 22, 1971, P.L. 613 [sic], §1, as amended, 25 P.S. §2753(a); the Act of August 13, 1963, P.L. 707, §12, as amended, 25 P.S. §2868; and the Act of July 21, 1979, P.L. 189, §2, as amended, 25 P.S.

§2873(d), which set forth the election schedule described in ¶16 of the Complaint, are enjoined until such time as the General Assembly has enacted a congressional redistricting plan that complies with Article I, Section 2 of the United States Constitution, Article I, Section 5 of the Pennsylvania Constitution, and all other applicable legal requirements.

3) This Court retains jurisdiction to ensure that a constitutionally valid congressional redistricting plan will be implemented in time for the 1992 elections. All named parties and any properly admitted intervenors (if any) shall submit proposed plans on, or before, February 11, 1992. If the General Assembly has not enacted such a plan, and the Governor has not signed into law a plan by February 11, 1992, this Court will begin consideration of all submitted plans and will either implement one of those plans or a plan drawn by this Court for use in the 1992 congressional elections.

4) All interested persons not named as a party to this case must file a motion for intervention prior to submission of a redistricting plan to this Court.

/s/ Francis A. Barry
FRANCIS A. BARRY, Senior Judge

IN THE COMMONWEALTH OF PENNSYLVANIA

ROBERT J. MELLOW, Senator, 22nd District et al., Plaintiffs	:	
v.	:	No. 25 M.D. 1992
BRENDA K. MITCHELL, Acting Secretary of the Commonwealth et al., Defendants	:	

MEMORANDUM ON PROCEDURE
BY PRESIDENT JUDGE CRAIG FILED: February 12, 1992

Although it is to be hoped that the legislature and Governor can enact a valid congressional redistricting bill while this litigation goes on, the court and parties must now proceed with maximum efficiency in the event that does not occur.

As indicated by the order of court to which this memorandum refers, the Commonwealth Court proposes, by a single judge, to consider plans for congressional redistricting in accordance with the 1990 census, commencing at 10:00 a.m. on Thursday, February 13, 1992, at the Harrisburg seat of the court, and continuing through Saturday, February 15, if necessary. Consideration will be limited to plans timely filed on or before February 11, 1992, in accordance with Order of January 30, 1992.

The initial portion of the hearing will involve the presentation of such plans by those parties who wish to support or join in the support of such plans, the reception of stipulations as to all pertinent census data and geographical configurations, and the indication of any other evidence proposed in the form of exhibits or by way of witnesses.

Particularly important is specifics as to deviation per district from the ideal of population parity, as well as maximum deviation per plan.

Thus, the initial portion of the hearing will in essence amount to an expedited pre-trial session, to be followed immediately by such further making of a record as is necessary.

As the order indicates, the presentation of supporting data should be, not just in the form of the prose of a proposed bill, but preferably in graphic format consisting of one or more maps to show proposed district boundaries in relation to census data and political subdivision boundaries. Recognizing that the preparation of such material may take time, it is understood that it may not be available at the outset, but should be submitted as promptly as possible.

The goal is to present the subject matter and make the necessary record during that period, so that during the work week of February 18-22, (1) counsel will have an opportunity to prepare and file memoranda in support of their positions, not later than the close of business Thursday, February 20, which will (2) enable this court to arrive at findings and a decision or — if the Supreme Court has taken jurisdiction and remanded the matter to this court for hearing — a proposed decision, at the earliest possible time in the week of February 24, 1992.

In view of the foregoing timetable in this Court, and recognizing the possibility of expedited further proceedings in the Supreme Court, we will look to the original respondent Secretary of the Commonwealth for a proposed revision of the election calendar, to be incorporated by the courts in a final order.

/s/ David W. Craig
DAVID W. CRAIG, President Judge

IN THE COMMONWEALTH OF PENNSYLVANIA

ROBERT J. MELLOW, Senator, 22nd District et al., Plaintiffs	:	
v.	:	No. 25 M.D. 1992
BRENDA K. MITCHELL, Acting Secretary of the Commonwealth et al., Defendants	:	

ORDER

NOW, February 12, 1992, hearing of this matter is hereby scheduled to commence at 10:00 a.m., Thursday, February 13, 1992, at Courtroom No. 2 of this court, Fifth Floor, South Office Building, Harrisburg, PA. The parties plaintiff, including parties allowed to intervene as such, shall be prepared to:

1. Support, or join in the support of, proposed 21-district plans, timely filed on or before February 11, 1992, in accordance with Order dated January 30, 1992;

2. Stipulate as to: (1) census data, including population count and such other census information as may be pertinent, and (2) such boundaries of political subdivisions of the Commonwealth as may be pertinent;

3. Provide as to each plan supported specifics as to deviation of each proposed district from population parity, and as to maximum population deviation of the plan;

4. Display, as soon as is possible, the above plans and census data in the form of one or more maps and, if desired, other graphic format, not just in bill form; and

5. Report to the court the identity of any proposed supporting witnesses, the nature of any other evidence proposed and the estimated time required for the reception of such evidence.

After accomplishment of the foregoing, the court will proceed immediately to receive evidence on an expedited basis, continuing on Thursday and Friday, and through the business hours of Saturday, February 15, 1992, if necessary.

/s/ David W. Craig
DAVID W. CRAIG, President Judge

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

ROBERT J. MELLOW, SENATOR, 22ND DISTRICT ET AL.	:	
Petitioners,	:	No. 7 M.D. Misc. Dkt.1992
v.	:	[No. 25 M.D. 1992]
BRENDA K. MITCHELL, ACTING SECRETARY OF THE COMMONWEALTH ET AL.	:	

ORDER

PER CURIAM:

AND NOW, this 13th day of February, 1992, the request for the assumption of plenary jurisdiction is granted. Since the matter is presently proceeding in the Commonwealth Court, The Honorable David W. Craig, President Judge of the Commonwealth Court, is hereby designated as a Master for this Court for the purpose of expedited proceedings and hearing, including rulings upon any ancillary petitions, applications and motions filed. Said Master shall report to this Court not later than February 26, 1992, as to its findings, recommended decision and a form or order for a revised election schedule.

Jurisdiction retained.
Mr. Justice Larsen did not participate in this matter.

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

ROBERT J. MELLOW, SENATOR, 22ND DISTRICT ET AL.,	:	
Petitioners	:	No. 7 M.D. Misc. Docket 1992
v.	:	
BRENDA K. MITCHELL, ACTING SECRETARY OF THE COMMONWEALTH ET AL.,	:	

ORDER

PER CURIAM

AND NOW, this 3rd day of March, 1992, it is hereby ordered that argument on the exceptions filed in the above-captioned matter will be held on Saturday, March 7, 1992, at 10:30 a.m. in the courtroom of the Supreme Court in Pittsburgh, Pennsylvania.

Mr. Justice Larsen did not participate in the consideration or decision of this Order.

CONSTITUTIONAL AND STATORY PROVISIONS

United States Constitution Provisions

Article I, section 2, clause 3:

> Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse [sic] three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

Article I, section 4, clause 1,:

> The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or

alter such Regulations, except as to the Places of chusing Senators.

Fourteenth Amendment:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

. . .

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Fifteenth Amendment:

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Pennsylvania Constitution Provision

Article II, section 16:

The Commonwealth shall be divided into fifty senatorial and two hundred three representative districts, which shall be composed of compact and contiguous territory as nearly equal in population as practicable. Each senatorial district shall elect one Senator, and each representative district one Representative. Unless absolutely necessary no county, city, incorporated town, borough, township or ward shall be divided in forming either a senatorial or representative district.

Article II, section 17:

(a) In each year following that in which the Federal decennial census is officially reported as required by Federal law, a Legislative Reapportionment Commission shall be constituted for the purpose of reapportioning the

Commonwealth. The commission shall act by a majority of its entire membership.

(b) The commission shall consist of five members: four of whom shall be the majority and minority leaders of both the Senate and the House of Representatives, or deputies appointed by each of them, and a chairman selected as hereinafter provided. No later than the fourth Monday in January of the year following the year in which the Federal decennial census if officially reported as required by Federal law, the four members shall be certified by the President Pro Tempore of the Senate and the Speaker of the House of Representatives to the elections officer of the Commonwealth who under law shall have supervision over elections.

The four members within forty-five days after their certification shall select the fifth member, who shall serve as chairman of the commission, and shall immediately certify his name to such elections officer. The chairman shall be a citizen of the Commonwealth other than a local, State or Federal official holding an office to which compensation is attached.

If the four members fail to select the fifth member within the time prescribed, a majority of the entire membership of the Supreme Court within thirty days thereafter shall appoint the chairman as aforesaid and certify his appointment to such elections officer.

Any vacancy in the commission shall be filled within fifteen days in the same manner in which such position was originally filled.

(c) No later than ninety days after either the commission has been duly certified or the population data for the Commonwealth as determined by the Federal decennial census are available, whichever is later in time, the commission shall file a preliminary reapportionment plan with such elections officer.

The commission shall have thirty days after filing the preliminary plan to make corrections in the plan.

Any person aggrieved by the preliminary plan shall have the same thirty-day period to file exceptions with the commission in which case the commission shall have thirty days after the date the exceptions were filed to prepare and file with such elections officer a revised reapportionment plan. If no exceptions are filed within thirty days, or if filed and acted upon, the commission's plan shall be final and have the force of law.

(d) Any aggrieved person may file an appeal from the final plan directly to the Supreme Court within thirty days after the filing thereof. If the appellant establishes that the final plan is contrary to law, the Supreme Court shall issue an order remanding the plan to the commission and directing the commission to reapportion the Commonwealth in a manner not inconsistent with such order.

(e) When the Supreme Court has finally decided an appeal or when the last day for filing an appeal has passed with no appeal taken, the reapportionment plan shall have the force of law and the districts therein provided shall be used

thereafter in elections to the General Assembly until the next reapportionment as required under this section seventeen.

(f) The General Assembly shall appropriate sufficient funds for the compensation and expenses of members and staff appointed by the commission, and other necessary expenses. The members of the commission shall be entitled to such compensation for their services as the General Assembly from time to time shall determine, but no part thereof shall be paid until a preliminary plan is filed. If a preliminary plan is filed but the commission fails to file a revised or final plan within the time prescribed, the commission members shall forfeit all right to compensation not paid.

(g) If a preliminary, revised or final reapportionment plan is not filed by the commission within the time prescribed by this section, unless the time be extended by the Supreme Court for cause shown, the Supreme Court shall immediately proceed on its own motion to reapportion the Commonwealth.

(h) Any reapportionment plan filed by the commission, or ordered or prepared by the Supreme Court upon the failure of the commission to act, shall be published by the elections officer once in at least one newspaper of general circulation in each senatorial and representative district. The publication shall contain a map of the Commonwealth showing the complete reapportionment of the General Assembly by districts, and a map showing the reapportionment districts in the area normally served by the

newspaper in which the publication is made. The publication shall also state the population of the senatorial and representative districts having the smallest and largest population and the percentage variation of such districts from the average population for senatorial and representative districts.

Article V, section 1:

The judicial power of the Commonwealth shall be vested in a unified judicial system consisting of the Supreme Court, the Superior Court, the Commonwealth Court, courts of common pleas, community courts, municipal and traffic courts in the City of Philadelphia, such other courts as may be provided by law and justices of the peace. All courts and justices of the peace and their jurisdiction shall be in this unified judicial system.

Article V, section 2:

The Supreme Court

(a) shall be the highest court of the Commonwealth and in this court shall be reposed the supreme judicial power of the Commonwealth;

(b) shall consist of seven justices, one of whom shall be the Chief Justice; and

(c) shall have such jurisdiction as shall be provided by law.

2 U.S.C. §2a:

> (a) On the first day, or within one week thereafter, of the first regular session of the Eighty-second Congress and of each fifth Congress thereafter, the President shall transmit to the Congress a statement showing the whole number of Representatives to which each State, excluding Indians not taxed, as ascertained under the seventeenth and each subsequent decennial census of the population, and the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives by the method known as the method of equal proportions, no State to receive less than one Member.
>
> (b) Each State shall be entitled, in the Eighty-third Congress and in each Congress thereafter until the taking effect of a reapportionment under this section or subsequent statute, to the number of Representatives shown in the statement required by subsection (a) of this section, no State to receive less than one Member. It shall be the duty of the Clerk of the House of Representatives, within fifteen calendar days after the receipt of such statement, to send to the executive of each State a certificate of the number of Representatives to which such State is entitled under this section. In case of a vacancy in the office of Clerk, or of his absence or inability to discharge this duty, then such duty shall devolve upon the Sergeant at Arms of the House of Representatives; and in case of vacancies in the offices of both the Clerk and the Sergeant at Arms, or the absence or inability of

both to act, such duty shall devolve upon the Doorkeeper of the House of Representatives.

(c) Until a State is redistricted in the manner provided by the law thereof after any apportionment, the Representatives to which such State is entitled under such apportionment shall be elected in the following manner: (1) If there is no change in the number of Representatives, they shall be elected from the districts then prescribed by the law of such State, and if any of them are elected from the State at large they shall continue to be so elected; (2) if there is an increase in the number of Representatives, such additional Representative or Representatives shall be elected from the State at large and the other Representatives from the districts then prescribed by the law of such State; (3) if there is a decrease in the number of Representatives but the number of districts in such State is equal to such decreased number of Representatives, they shall be elected from the districts then prescribed by the law of such State; (4) if there is a decrease in the number of Representatives but the number of districts in such State is less than such number of Representatives, the number of Representatives by which such number of districts is exceeded shall be elected from the State at large and other Representatives from the districts then prescribed by the law of such State; or (5) if there is a decrease in the number of Representatives and the number of districts in such State exceeds such decreased number of Representatives, they shall be elected from the State at large.

42 U.S.C. §1973:

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.

(b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

Pennsylvania Statutory Provisions

25 P.S. §3571:

For the purpose of electing representatives of the people of Pennsylvania to serve in the House of Representatives in the Congress of the United States, this Commonwealth shall be divided into 23

districts which shall have one Congressman each, as follows:

The First District shall consist of Wards 1, 2, 5, 7, 13, 14, 15, 18, 19, 20, 25, 26, 27 and 30 (Divisions 4, 5, 10, 11, 12, 13, 14, 16, 17 and 18), 31, 36, 37, 39 and 42 (Divisions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24), 43, 47, 48 and 49 of the City of Philadelphia of Philadelphia County.

The Second District shall consist of Wards 3, 4, 6, 8 and 9 (Divisions 1, 2, 3, 14 and 15), 11, 12, 16, 17, 22, 24, 28, 29 and 30 (Divisions 1, 2, 3, 6, 7, 8, 9, 15, 19, 20 and 21), 32 and 34 (Divisions 1, 2, 3, 4, 5, 6, 7, 9, 10, 36, 38 and 43), 38 and 40 (Division 2), 44, 46, 50, 51, 52, 59 and 60 of the City of Philadelphia of Philadelphia County.

The Third District shall consist of Wards 10, 23, 33, 35, 41 and 42 (Division 25), 45, 53, 54, 55, 56, 57, 58, 61, 62, 63, 64, 65 and 66 of the City of Philadelphia of Philadelphia County.

The Fourth District shall consist of the Townships of Bethel, Burrell, Cadogan, East Franklin, Gilpin, Kittanning, Madison, North Buffalo, Parks, Plumcreek, South Bend, South Buffalo, Sugarcreek, Washington and West Franklin, and the Boroughs of Applewold, Elderton, Freeport, Kittanning, Leechburg, West Kittanning and Worthington of Armstrong County; the City of Beaver Falls, the Townships of Brighton, Chippewa, Darlington, Daughtery, Franklin, Greene, Harmony, Marion, New Sewickley, North Sewickley, Patterson, Pulaski, South Beaver, Vanport and White, and the

Boroughs of Aliquippa, Baden, Beaver, Big Beaver, Bridgewater, Conway, Darlington, Eastvale, Economy, Ellwood City (Beaver County Portion), Fallston, Georgetown, Glasgow, Homewood, Hookstown, Koppel, New Brighton, New Galilee, Ohioville, Patterson Heights and West Mayfield of Beaver County; Butler County; Indiana County; the City of New Castle, the Townships of Little Beaver, Mahoning, North Beaver, Perry, Plain Grove, Pulaski, Shenango, Taylor, Union, Wayne and Wilmington, and the Boroughs of Bessemer, Ellport, Ellwood City (Lawrence County Portion), Enon Valley, New Beaver, Snpj, South New Castle, Volent and Wampum of Lawrence County; and the Townships of Fairfield, Ligonier, and the Boroughs of Bolivar and Ligonier of Westmoreland County.

The Fifth District shall consist of the City of Coatesville, the Townships of Birmingham, Caln, Charlestown, East Bradford, East Brandywine, East Caln, East Fallowfield, East Goshen, East Marlborough, East Pikeland, East Whiteland, Easttown, Franklin, Kennett, London Britain, London Grove, New Garden, Newlin, Pennsbury, Pocopson, Schuylkill, Thornbury, Tredyffrin, Uwchlan, Valley, West Bradford, West Brandywine, West Goshen, West Marlborough, West Pikeland, West Whiteland, Westtown and Willistown, and the Boroughs of Avondale, Downingtown, Kennett Square, Malvern, Modena, Phoenixville, South Coatesville, West Chester, and West Grove of Chester County; the City of Chester, the Townships of Bethel, Birmingham, Chester, Concord, Lower Chichester, Thornbury and Upper Chichester, and the Boroughs of Marcus Hook and Trainer of Delaware County; the

Townships of Douglass, East Norriton, Franconia, Hatfield, Limerick, Lower Frederick, Lower Pottsgrove, Lower Providence, Marlborough, New Hanover, Perkiomen, Salford, Skippack, Upper Frederick, Upper Hanover, Upper Pottsgrove, Upper Providence; Upper Salford, West Norriton and West Pottsgrove, and the Boroughs of Collegeville, East Greenville, Green Lane, Hatfield, Pennsburg, Pottstown, Red Hill, Royersford, Schwenksville, Souderton, Telford (Montgomery County Portion) and Trappe of Montgomery County.

The Sixth District shall consist of Berks County; the Townships of Banks and Packer, and the Boroughs of Beaver Meadows, Lansford, Nesquehoning and Summit Hill of Carbon County, the Townships of Caernarvon, East Earl, Brecknock, East Cocalico, and West Cocalico, and the Boroughs of Adamstown, Denver and Terre Hill of Lancaster County; and Schuylkill County.

The Seventh District shall consist of the Townships of Aston, Darby, Edgemont, Haverford, Marple, Middletown, Nether, Newtown, Providence, Radnor, Ridley, Springfield, Tinicum, Upper Darby and Upper Providence, and the Boroughs of Aldan, Brookhaven, Chester Heights, Clifton Heights, Collingdale, Colwyn, Darby, East Lansdowne, Eddystone, Folcroft, Glenolden, Lansdowne, Media, Millbourne, Morton, Norwood, Parkside, Prospect Park, Ridley Park, Rose Valley, Rutledge, Sharon Hill, Swarthmore, Upland and Yeadon of Delaware County; Ward 40 (Divisions 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43,

44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55 and 56) of the City of Philadelphia of Philadelphia County.

The Eighth District shall consist of Bucks County; the Townships of Lower Moreland and Districts 1, 2 (Division 1), 3, 4, 5, 6 and 7 of Upper Moreland, and the Borough of Bryn Athyn of Montgomery County.

The Ninth District shall consist of Bedford County, Blair County, the Townships of Chest, Clearfield, Dean, Elder, Reade, Susquehanna and White, and the Boroughs of Hastings and Patton of Cambria County; the Townships of Beccaria, Bell, Bigler, Bloom, Boggs, Brady, Burnside, Chest, Cooper, Decatur, Ferguson, Greenwood, Gulich, Jordan, Knox, Morris, Penn, Pike and Woodward, and the Boroughs of Brisbin, Burnside, Chester Hill, Coalport, Curwensville, Glenhope, Grampian, Houtzdale, Irvona, Lumber City, Mahaffey, New Washington, Newburg, Osceola, Ramey, Troutville, Wallaceton and Westover of Clearfield County; the Townships of Cooke, Dickinson, Hopewell, Lower Frankford, Lower Mifflin, Monroe, North Newton, Penn, Shippensburg, South Middleton, South Newton, Southampton, Upper Frankford and Upper Mifflin, and the Boroughs of Mt. Holly Springs, Newburg, Newville and Shippensburg (Cumberland County Portion) of Cumberland County; Franklin County; Fulton County; Huntingdon County; Juniata County; and Mifflin County.

The Tenth District shall consist of Bradford County; the Townships of Chapman, Colebrook, Gallagher, Grugan, Leidy, Noyes and Woodward, and the Boroughs of Renova and South Renova of

Clinton County; Lackawanna County; the Townships of Jackson, Middle Smithfield, Paradise, Pocono, Price, Smithfield and Stroud, and the Boroughs of Delaware Water Gap, East Stroudsburg and Stroudsburg of Monroe County; Pike County; Potter County; Susquehanna County; Tioga County; Wayne County; and Wyoming County.

The Eleventh District shall consist of the Townships of East Penn, Franklin, Kidder, Lausanne, Lehigh, Lower Towamensing, Mahoning, Penn Forest and Towamensing, and the Boroughs of Bowmanstown, East Side, Jim Thorpe, Lehighton, Palmerton, Parryville, Weatherly and Weissport of Carbon County, Columbia County; Luzerne County; the Townships of Barrett, Coolbaugh and Tobyhanna; and the Borough of Mt. Pocono of Monroe County, Montour County; the City of Shamokin, the Townships of Coal, East Cameron and Mt. Carmel, and the Boroughs of Kulpmont, Marion Heights and Mt. Carmel of Northumberland County; and Sullivan County.

The Twelfth District shall consist of the Township of Kiskiminetas, and the Boroughs of Apollo and North Apollo of Armstrong County; the City of Johnstown, the Townships of Adams, Allegheny, Barr, Blacklick, Cambria, Conemaugh, Cresson, Croyle, East Carroll, East Taylor, Gallitzin, Jackson, Lower Yoder, Middle Taylor, Munster, Portage, Richland, Stonycreek, Summerhill, Upper Yoder, Washington, West Carroll, and West Taylor, and the Boroughs of Ashville, Barnesboro, Brownstown, Carrolltown, Cassandra, Chest Springs, Cresson, Daisytown,

Dale, East Conemaugh, Ebensburg, Ehrenfeld, Ferndale, Franklin, Gallitzin, Geistown, Lilly, Lorain, Loretto, Nanty Glo, Portage, Sankertown, Scalp Level, South Fork, Southmont, Spangler, Summerhill, Tunnelhill (Cambria County Portion), Vintondale, Westmont and Wilmore of Cambria County; Somerset County; the Cities of Greensburg and Jeannette, the Townships of Bell, Cook, Derry, Donegal, Hempfield, Loyalhanna, Mt. Pleasant, North Huntingdon, Penn, Salem, St. Clair, Unity and Washington and the Boroughs of Adamsburg, Arona, Avonmore, Delmont, Derby, Donegal, Export, Hunker, Irwin, Latrobe, Madison, Manor, Murrysville, New Alexandria, New Florence, New Stanton, North Irwin, Penn, Seward, South Greensburg, Southwest Greensburg, Youngstown and Youngwood of Westmoreland County.

The Thirteenth District shall consist of the Townships of Abington, Cheltenham, Horsham, Lower Gwynedd, Lower Merion, Lower Salford, Montgomery, Plymouth, Springfield, Towamencin, Upper Dublin, Upper Gwynedd, Upper Merion, District 2 (~~Division~~ 2) of Upper Moreland, Whitemarsh, Whitpain and Worcester, and the Boroughs of Ambler, Bridgeport, Conshohocken, Hatboro, Jenkintown, Lansdale, Narberth, Norristown, North Wales, Rockledge and West Conshohocken of Montgomery County; Wards 9 (Divisions 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 16 and 17), 21 and 34 (Divisions 8, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37, 39, 40, 41 and 42) of the City of Philadelphia of Philadelphia County.

The Fourteenth District shall consist of the City of Pittsburgh, the Townships of Baldwin, Kennedy, Neville, Reserve and Stowe, and the Boroughs of Castle Shannon, Coraopolis, Ingram, McKees Rocks, Millvale, Mt. Oliver, Sharpsburg and Wilkinsburg of Allegheny County.

The Fifteenth District shall consist of Lehigh County; Northampton County; and the Townships of Chestnut Hill, Eldred, Hamilton, Polk, Ross and Tunkhannock of Monroe County.

The Sixteenth District shall consist of the Townships of East Nottingham, East Coventry, East Nantmeal, East Vincent, Elk, Highland, Honeybrook, Londonderry, Lower Oxford, New London, North Coventry, Penn, Sadsbury, South Coventry, Upper Oxford, Upper Owchlan, Wallace, Warwick, West Caln, West Fallowfield, West Nantmeal, West Nottingham, West Sadsbury and West Vincent, and the Boroughs of Atglen, Elverson, Honey Brook, Oxford, Parkersburg and Spring City of Chester County; the City of Lancaster, the Townships of Bart, Clay, Colerain, Conestoga, Conoy, Drumore, Earl, East Donegal, East Drumore, East Hampfield, East Lampeter, Eden, Elizabeth, Ephrata, Fulton, Lancaster, Leacock, Little Britain, Manheim, Manor, Martic, Mt. Joy, Paradise, Penn, Pequea, Providence, Rapho, Sadsbury, Salisbury, Strasburg, Upper Leacock, Warwick, West Donegal, West Earl, West Hempfield and West Lampeter, and the Boroughs of Akron, Christiana, Columbia, East Petersburg, Elizabethtown, Ephrata, Lititz, Manheim, Marietta, Millersville, Mountville, Mt. Joy, New Holland, Quarryville and Strasburg of Lancaster County; and Lebanon County.

The Seventeenth District shall consist of Dauphin County; Lycoming County; the City of Sunbury, the Townships of Delaware, East Chillisquaque, Jackson, Jordan, Lewis, Little Mahanoy, Lower Augusta, Lower Mahanory, Point, Ralpho, Rockefeller, Rush, Shamokin, Turbot, Upper Augusta, Upper Mahanory, Washington, West Cameron, West Chillisquaque and Zerbe, and the Boroughs of Herndon, McEwensville, Milton, Northumberland, Riverside, Snydertown, Turbotville and Watsontown of Northumberland County; Perry County; Snyder County; and Union County.

The Eighteenth District shall consist of the Townships of Aleppo, Crescent, Findlay, Hampton, Kilbuck, Leet, Marshall, McCandless, Moon, Mt. Lebanon, North Fayette, O'Hara, Ohio, Penn Hills, Pine, Richland, Robinson, Ross, Scott, Shaler, South Park and Upper St. Clair, and the Boroughs of Aspinwall, Avalon, Bell Acres, Bellevue, Ben Avon, Ben Avon Heights, Bethel Park, Blawnox, Braddock Hills, Bradford Woods, Carnegie, Churchill, Crafton, Dormont, Edgewood, Edgeworth, Emsworth, Etna, Forest Hills, Fox Chapel, Franklin Park, Glenfield, Green Tree, Haysville, Jefferson, Osborne, Pennsbury Village, Pleasant Hills, Rosslyn Farms, Sewickley, Sewickley Heights, Sewickley Hills, Thornburg, West Elizabeth, West View and Whitehall of Allegheny County.

The Nineteenth District shall consist of Adams County; the Townships of East Pennsboro, Hampden, Lower Allen, Middlesex, North Middleton, Silver Spring, Upper Allen and West Pennsboro, and the Boroughs of Camp Hill,

Carlisle, Lemoyne, Mechanicsburg, New Cumberland, Shiremanstown, West Fairview and Wormleysburg of Cumberland County; and York County.

The Twentieth District shall consist of the Cities of Clairton, Duquesne and McKeesport, the Townships of East Deer, Elizabeth, Fawn, Forward, Frazer, Harmar, Harrison, Indiana, North Versailles, South Versailles, Springdale, West Deer and Wilkins, and the Boroughs of Baldwin, Brackenridge, Braddock, Brentwood, Chalfant, Cheswick, Dravosburg, East McKeesport, East Pittsburgh, Elizabeth, Glassport, Homestead, Liberty, Lincoln, Monroeville, Munhall, North Braddock, Oakmont, Pitcairn, Plum, Port Vue, Rankin, Springdale, Swissvale, Tarentum, Trafford (Allegheny County Portion), Turtle Creek, Verona, Versailles, Wall, West Homestead, West Mifflin, Whitaker, White Oak and Wilmerding of Allegheny County; the Cities of Arnold, Lower Burrell, Monessen and New Kensington, the Townships of Allegheny, East Huntingdon, Rostraver, Sewickley, South Huntingdon and Upper Burrell, and the Boroughs of East Vandergrift, Hyde Park, Mt. Pleasant, North Belle Vernon, Oklahoma, Scottdale, Smithton, Sutersville, Trafford (Westmoreland County Portion), Vandergrift, West Leechburg and West Newton of Westmoreland County.

The Twenty-first District shall consist of Crawford County; Erie County; the Townships of Hickory, Neshannock, Scott, Slippery Rock and Washington, and the Borough of New Wilmington of Lawrence County; and Mercer County.

The Twenty-second District shall consist of the Townships of Collier and South Fayette, and the Boroughs of Bridgeville, Heidelberg, Leetsdale, McDonald (Allegheny County Portion) and Oakdale of Allegheny County; the Townships of Center, Hanover, Hopewell, Independence, Potter, Raccoon and Rochester, and the Boroughs of Ambridge, East Rochester, Frankfort Springs, Freedom, Industry, Midland, Monaca, Rochester, Shippingport and South Heights of Beaver County; Fayette County; Greene County; and Washington County.

The Twenty-third District shall consist of the Townships of Boggs, Bradys Bend, Cowanshannock, Hovey, Mahoning, Manor, Perry, Pine, Rayburn, Redbank, Valley and Wayne, and the Boroughs of Atwood, Dayton, Ford City, Ford Cliff, Manorville, Parker City, Rural Valley and South Bethlehem of Armstrong County; Cameron County; Centre County; Clarion County; the City of Dubois, the Townships of Bradford, Covington, Girard, Goshen, Graham, Huston, Karthaus, Lawrence, Pine, Sandy and Union, and the Boroughs of Clearfield and Falls Creek (Clearfield County Portion) of Clearfield County; the City of Lock Haven, the Townships of Allison, Bald Eagle, Beech Creek, Castanea, Crawford, Dunnstable, East Keating, Greene, Lamar, Logan, Pine Creek, Porter, Wayne and West Keating, and the Boroughs of Avis, Beech Creek, Flemington, Loganton and Mill Hall of Clinton County; Elk County; Forest County; Jefferson County; McKean County; Warren County; and Venango County.

TRANSCRIPT MATERIALS

Transcript of Master's Hearing, Vol. I at 17-19:

THE COURT: . . . Have I missed any statewide plan in getting this introduction?

MR. KRILL: Yes, Your Honor. John Krill for Senator Loeper and his co-intervenors.

Your Honor, we did file a plan that was the plan passed by the State Senate. We have brought with us this morning a corrected plan and map that we would like to offer to the Court for its consideration.

THE COURT: It's late. In fact, you didn't have any plan in by the 11th, did you?

MR. MacNETT: We had a plan. We did not submit the maps that —

THE COURT: That's why counsel is filing it.

MR. MacNETT: There was a legal description filed with the Court with our intervention.

THE COURT: Before the 11th?

MR. MacNETT: Yes, on the 11th.

MR. KRILL: But not a map, Your Honor.

THE COURT: Okay. Frankly, this would be the only exception I would make. Again, recognizing that there is a party or partisan aspect of this, I just want to make sure all viewpoints are represented.

What is the maximum on that plan?

MR. MOORE: Your Honor, for clarification, are they giving us numbers on the plan they submitted, complying with the Court's order, or are they giving us the number on the new plan they are now attempting to submit?

MR. MacNETT: The numbers I would propose to offer the Court would be on the plan amendment that we —

MR. MOORE: The plan they are attempting to submit after the deadline.

MR. MacNETT: That's correct.

THE COURT: Is this a correction of the plan that you submitted on the 11th, or is it a new plan?

MR. MacNETT: It is essentially the plan that we filed on the 11th, with some very minor fine tuning.

THE COURT: I'm being very liberal on this. Go ahead.

MR. MOORE: Just for the record, we would object.

THE COURT: I will overrule that objection.

Transcript of Master's Hearing, Vol. I at 34-37.

Q Mr. McKillop, could you tell the Court what your position is?

A I'm an administrative officer for the Senate Democratic Leader, which is Senator Mellow.

Q Do you have any other positions in state government, sir?

A Yes, I was the supervisor of the Senate Democratic Reapportionment Project during the Senate and House reapportionment.

Q Could you describe your responsibilities as the supervisor of the Senate Democratic Reapportionment Project for the Court, please?

A Yes. I supervised a staff of four on the technical aspects of our reapportionment project.

Q When you say the technical aspects of the reapportionment project, can you identify what those are, please?

A The actual drawing of the lines and dealing with the data needed to draw those lines.

Q How long have you served in your position as supervisor of the Senate Democratic Reapportionment Project?

A I started working on the project part-time, starting in the mid 1980s, about 1985, and full-time as of 1989.

Q Mr. McKillop, have you had any other employment relating to politics or elections or campaigning?

A On five occasions I left the employ of the Commonwealth and the State Senate and worked for the Democratic Senate State Campaign Committee, doing electoral research, polling, things of that nature.

Q Over what time period are we talking about here?

A Starting 1980 to 1986.

Q During those five occasions —

THE COURT: Excuse me, I consider this witness qualified as an expert in this area, if that's what you want. Go ahead.

MR. PACKMAN: Thank you, Your Honor.

MR. KRILL: Your Honor, excuse me.

THE COURT: Do you want a voir dire?

MR. KRILL: At this point, Your Honor, I think if the witness is going to be qualified as an expert as opposed to a fact witness, I would like an offer from counsel.

MR. PACKMAN: Your Honor, given the nature of these proceedings, we would submit Mr. McKillop is both a fact witness in the sense he's been responsible for the drawing and supervising of the drawing of the plans before the Court. He is also an expert witness to the extent he's had extensive experience in redistricting and political campaigning, polling, that sort of thing.

THE COURT: Isn't this used most primarily as a fact witness? Given the objective fact bases for each plan, the subjective evaluation of the plan is on the Court's shoulders. Isn't that fair?

MR. PACKMAN: All right, then, Your Honor. Your Honor, maybe we are debating an abstract issue. I don't intend to ask Mr. McKillop his opinions about whether the plan is fair, just or appropriate.

THE COURT: What, for example, would you ask his opinions by? I think that's what Mr. Krill wants as an offer.

MR. PACKMAN: Mr. McKillop will be testifying about the racial makeup of the congressional districts we proposed in the Philadelphia area.

THE COURT: That is not a matter of opinion, is it?

MR. PACKMAN: I don't believe so. I'm just identifying the subject matter for the Court to see if we have a potential problem. He will be talking about election results, the results of various elections that have occurred in that proposed congressional district.

THE COURT: Who won, who lost, by how much?

MR. PACKMAN: Right, that sort of thing.

THE COURT: That's not an opinion. Unless he wants to tell us whether it was a good candidate or bad candidate.

MR. PACKMAN: I don't believe so, Your Honor.

THE COURT: I'm not sure there would be much of a range for opinion. Go ahead and let's see.

BY MR. PACKMAN:

Q Mr. McKillop, as a result of your experience in redistricting and campaigning —

MR. KRILL: Your Honor, given your ruling, I would object to his qualification as an expert. I understand there may be specific questions that would be objectionable and others not.

THE COURT: I will overrule your objection.

Transcript of Master's Hearing, Vol. I at 70-72.

THE COURT: Again, I don't think it's necessary to repeat the figures.

Let me ask with respect to these illustrations, do I gather correctly that these hypothetically indicate new congressional districts?

MR. PACKMAN: 1 and 2.

THE COURT: 1 and 2 under Plans 2 and 3 have an increased black voter percentage, but new Congressional District No. 3 being all in Philadelphia would have a reduced African-American voter percentage?

A I do believe it's reduced but slightly.

THE COURT: Let's take '87. White Republican Rizzo would do much better in new Congressional District No. 3, is that right?

A That is correct.

THE COURT: And African-American and Democrat Goode would do much less?

A That's correct.

THE COURT: Why is that?

A Because both Congressional District 1 and 2 are effective majority-minority districts.

THE COURT: And 3 is not?

A And 3 is not.

THE COURT: Thank you.

BY MR. PACKMAN:

Q When you say effective majority-minority districts, what do you mean?

A It allows the majority-minority, in this case, African-American voters —

MR. MOORE: Objection.

A — the opportunity —

MR. HARVEY: Now we are getting into opinion.

MR. MOORE: I'm not sure what he's talking about when he refers to majority-minority.

THE COURT: He's just defining his term. I overrule the objection because he's defining the term that he's using.

MR. HARVEY: I withdraw the objection. I think Your Honor is correct.

BY MR. PACKMAN:

Q Can you tell the Court what you mean by majority-minority district?

A A majority-minority district where the minority, in this case African-American, is majority in that district.

Q What do you mean by an effective majority-minority district?

A One where that majority-minority, in this case African-American, have an opportunity to select the candidate of their choice.

Transcript of Master's Hearing, Vol. 2A at 8-9:

MR. MOORE: Your Honor, you made a decision yesterday Mr. Murphy would not be able to submit a plan because they did not timely file. They were allowed to intervene, but they are not allowed to submit a plan. Are you now reversing your decision?

THE COURT: Did I say that?

MR. MOORE: Yes.

THE COURT: I did not say that at all.

MR. MOORE: Then they are not going to be allowed to submit a plan?

THE COURT: Obviously I'm considering, because I think it's important to have every possible plan, every official plan in this ballpark. If I vacated that order and allowed them, it would be because of an extreme-felt need. I'm totally justified in keeping it out because it was tardily filed. As I say, I'm trying to balance here considerations of completeness.

I think it's fair to say, and I sort of think out loud, as I'm accustomed to do in appellate arguments, ideally or preferably or perhaps even feasibly, this Court should make its decision, rest its decision on one entire plan or the other. To fit together two plans appears, to my untutored mind, to be the same as trying to take part of the jigsaw puzzle pieces from one jigsaw and replace it with pieces from a totally different puzzle, cut on a different configuration. At present I don't think it's warranted, but I just wanted you to know what our maximum time exposure was.

Transcript of Master's Hearing, Vol 2B at 132-33:

MR. MURPHY: Your Honor, this morning you seemed to be contemplating reconsidering whether Representative Ryan could present his plan.

THE COURT: We will leave that up to the Federal Court.

Transcript of Master's Hearing, Vol. 2B at 129-30:

MR. PACKMAN: One final housekeeping matter, so I can call witnesses tonight, contact them over the telephone I mean.

If I can have some notion whether or not we will be allowed to call rebuttal witnesses. If I can have some notions whether or not I'd be allowed to call one rebuttal witness to testify very briefly, I'd very much appreciate it.

THE COURT: It's hard for me to predict. I'm going to have to control it so by this time tomorrow we are finished making a record.

I appreciate and am familiar with, as a litigator myself for many years, Counsel's desire to protect the record and to maximize opportunities. We have gotten a lot of useful information in here, and I think that every plan that has been presented — I wish we had what I would call the Ryan plan here, I wish we had another — there is another party that I authorized the intervention of today, the Fredrick Douglas Association from Philadelphia, represented by Mr. Jones. However, they did not request intervention until yesterday, the 13th, and of course had not submitted a plan. I have, where possible, construed the deadline of the 11th as broadly as possible and said that persons who missed that can nevertheless participate, and it was pretty well publicized.

I'm pointing for a goal by this time tomorrow we will be writing briefs or ready to write briefs.

Transcript of Master's Hearing, Vol. 3 at 137-44:

MR. KRILL: Your Honor, I guess at this point I would like to continue with moving exhibits into evidence . . . . Exhibit 16, which is the map Your Honor requested, the original Loeper map.

. . . .

THE COURT: I assume there's no objection to that. That's admitted.

(Loeper Exhibit No. 16 was admitted into evidence.)

MR. KRILL: Back to Exhibit 2, the aqua-covered book, which is the amended Loeper plan data.

THE COURT: With respect to 2, the amended plan; 3 and 4, the metropolitan areas and the amended plan; 5, that statewide map —

MR. KRILL: Also 11, which is the legal description for the amended plan.

THE COURT: And 13 and 14, which are registration and minority details on that, right?

MR. KRILL: That is correct, Your Honor.

THE COURT: Those are admitted solely for the purpose of —

MR. MOORE: I would like to reinstate my objection to the admission of each of those documents. The testimony we have

heard indicates there have been total population shifts between the first plan and second plan somewhere in excess of 327,000 people just in the districts we were able to quickly identify. A review of each of the population totals for the districts in that plan shows in every single district there are net population changes. Some districts they are as high as 300 people, one district it's as high as 400, and many of the districts it's in the hundreds. This is a different plan.

We have been told that the first plan was prepared in an effort to get some bipartisan support. In spite of the proponent's technical witness on this point, it is clear this plan would constitute a major shift in the political delegation. Currently there is a one vote republican edge in a 23-member delegation. We are going to lose two seats, we are going to a smaller delegation.

THE COURT: Are you now talking about Loeper 1 or Loeper amended? Original Loeper or amended Loeper?

MR. MOORE: The one vote edge is a current situation, it's our current delegation with 23 members. We are going down to 21, we are losing two, which is bad enough. Under the amended Loeper version, it is a likely possibility that there will be a three vote republican edge. That in itself is a significant change. On top of that is the fact that the delegation will change from 23 members to 21. That makes the impact of that three vote edge that much more significant. It cannot be argued that these are the same plans. This is a different plan.

THE COURT: I agree.

MR. MOORE: This is a second plan. But on top of that, it is a second plan which was not timely submitted.

THE COURT: I agree.

MR. MOORE: You are agreeing with me. I am on the record against the admission of untimely submitted plans. And in opposition to each one of those amendments.

MR. KRILL: I don't think the record supports the inference there is a difference in political outcomes between the Loeper original plan and Loeper amended plan. The record will show what it shows with respect to population shifts.

Mr. D'Innocenzo testified what he did in preparing the amended Loeper plan was alter some allocations of wards, but he was doing that to try to keep to the same result in avoiding splitting of precincts. The original plan has only one split precinct, the amended plan has only one split precinct, and that with a zero population affected.

Obviously, in order to achieve those same results and yet tighten deviation, you have got to do more in order to avoid splitting precincts which was a testified objective of in fact I think many of the state parties. I don't think the Loeper plan supports the inferences Mr. Moore suggests.

THE COURT: There were more than inferences. There were substantial population exchanges. As you say, they tend to come out with a rather low bottom-line value. But there were substantial population exchanges.

MR. KRILL: That is correct. I don't believe that substantially changes political outcomes or even registration outcomes, if you take a close look at the data. I suggest again that's a matter for evidence and it's a matter for the Court's consideration in deciding which plan is the best plan.

We are supporting the Loeper amended plan. At the outset of the proceeding we were given permission by Your Honor to amend our plan, we did so, we proceeded on that basis. I believe

that the documents, as you have just ruled, should be admitted, and it should be for the Court to decide.

THE COURT: The Loeper parties have not withdrawn the original plan. It is still before us. I rule that the amended plan is not allowable for consideration as a plan.

I admit the exhibits for the sole purpose of showing the deficiencies in the Loeper original plan.

MR. KRILL: I think you misunderstood me. I said the Loeper amended plan was the plan we stand behind.

THE COURT: You didn't withdraw Loeper Plan 1.

MR. KRILL: I didn't think it was necessary since you had ruled we should submit the amended plan, and the only data I had intended to provide the Court, until the Court asked for more, was the amended plan data.

THE COURT: You did not withdraw Loeper Plan 1.

MR. KRILL: If you will permit me to withdraw Loeper Plan 1 and substitute the amended plan, I will do so immediately.

THE COURT: I can't allow that for the reasons stated. The amended plan is a substantial difference. If it weren't a substantial difference, you wouldn't be pushing so hard to have the amended plan replace the original plan. If they were substantially the same, you'd be content to rest on the original plan, desirably amended by the departures. To be fair to the deadline, I have to say —

MR. KRILL: I think we have been prejudiced by the Court's initial ruling in this matter allowing us to file an amended plan.

. . . .

If there is any issue of voter registration -- well, we can produce a printout that will show Your Honor and show counsel that voter registrations are substantially the same in both plans. We wish to substitute the amended plan for the original plan, and I so move the Court.

THE COURT: If you do, you are going to have no plan before me. Let me point out:

As illustrated by the testimony this morning, the questions asked Mr. D'Innocenzo, by Mr. Moore particularly, simply amounted to having the witness agree to computations, and the witness, being a reasonable person, said if that's a correct computation, I have to agree. On the amended plan details, on the original plan details, all of the figures are in the record. If you want to support the original plan, which as you say is not very different, one would have to study the two maps closely to see the difference. It is time to turn to on the basis of the exhibits that are in the record, and every exhibit that's been offered has been admitted, with the sole exception of the detailing of an exhibit that relates to one attack. It's in the record. It's now time to turn to memoranda. And on that basis of those computations, give me the guts of it.

Obviously, the exhibits on the amended plan have to be in the record in order to show that — frankly, they can say it is to show the deficiencies in your original plan. You can say to show how close your original plan is to perfection. Use that as you wish.

MR. KRILL: Your Honor, may I suggest that if all consideration of the amended plan, as a plan for adoption by the Court, is precluded, I think that may, in fact, introduce true error of constitutional dimension into the Court's decision, for this reason: The record will show that the amended Loeper plan is the best plan in terms of enhancing minority rights and in terms of protecting minority rights.

Transcript of Master's Hearing, Vol. 3 at 209-22:

MR. PACKMAN: . . . I know the hour's late, but I would once again renew my request for rebuttal testimony, Your Honor?

THE COURT: Can we have an offer?

MR. PACKMAN: Your Honor, it would be expert testimony on the issue of whether a 69 percent or 68 percent African-American percentage is required in Congressional District 2. As the Court knows, it's our position a 62 percent African-American district, 62 percent African-American total population in Congressional District 2, would be more than sufficient to enable the African-American community in Congressional District 2 to elect a representative of its choice. I think that's reflected in part by Attorney Jones' profter to the Court, that her clients support the Plaintiffs' Proposed congressional plans as an alternative to the James plan.

I would also have to request Your Honor that it be done by telephone conference call, since my witness, unfortunately, has not been able to make it here.

THE COURT: I will now receive, but not encourage, any further offers with respect to rebuttal evidence.

. . . .

MR. HARVEY: . . . Concerning the rebuttal advance by Mr. Packman, I do agree that there is a major gap in his proofs, which I intend to address in my papers, and I don't wish to sandbag him by failing to note that. That is, I think there is a big gap. I think, however, it is also one which should prudently have been anticipated, since the whole thrust of his argument has been to create the two majority-minority districts. I believe he's been retained with that objective in mind, and to suggest he couldn't

prove it up during the three days that Your Honor set for hearing, it now being 4:20 . . . —

. . . .

In any event, I think there is a gap in Mr. Packman's case. I think it is unfair to the Court and counsel to propose that there be rebuttal at some point in the future, if that's what he's suggesting.

THE COURT: I will say that the attack on the reduction by some degree of District 1 in order to achieve a majority in District 2, at least by reaching in the direction of District 1, has been attacked in the —

MR. HARVEY: I think Your Honor reversed the two.

MR. PACKMAN: I think Your Honor reversed. The reduction of District 2 by bringing up District 1.

THE COURT: I beg your pardon. It has been attacked in the cases in chief.

Mr. Packman, would you specify your offer a little bit more. What would be the thrust and content, summarize the content of the proposed testimony.

MR. PACKMAN: We would proffer the testimony of Lisa Handley who is employed by Election Data Services in Washington D.C. Ms. Handley is an expert in this field, having done racial voting analysis for Election Data Services for some time. She's also teaching a course this year at George Washington University and holds a Ph.D. in political science.

Ms. Handley performed in certain statistically accepted techniques in the racial voting analysis area, such as homogenous precinct analysis and regression analysis, and she can explain to the Court what those are, or I can if the Court would prefer.

Ms. Handley analyzed a number of elections in Philadelphia during the 1980's and concluded on the basis of her analysis that an African-American total population percentage of 69 percent would not be required in the second congressional district in order to permit the African-American community the opportunity to elect a candidate of its choice. That indeed even a 62 percent percentage, the percentage in the Plaintiffs' Proposed Congressional Plans, would be more than adequate in order for an African-American candidate or the candidate of the African-American community's choice to win election in that district.

THE COURT: Would her testimony be required to be supported by additional exhibits not now on the record?

MR. PACKMAN: No, Your Honor.

. . . .

MR. HARVEY: If the proposition is that the black community can select, the African-American community can select its own representative, and Mr. Packman repeatedly referred in the singular to that, then that is one proposition which might be proven by some statistical analysis without regard to what's actually happened in real life, where I have challenged that and where I think it's inappropriate to be receiving statistical proofs which presume that there will be a single candidate from the African-American community, it has been made plain in the cross-examination. I think that's the gap which now exists in the record. Perhaps Mr. Packman intends to close that. But I think it's unfair and inconsistent with the way Your Honor desires to bring the proceedings to a close, that this issue which was anticipated from the very beginning should be one that keeps us still open and in session beyond 4:30 on Saturday.

MR. KRILL: I found something I can agree with Mr. Harvey on. I believe this is an issue that was squarely within the

scope of the Plaintiffs' complaint, it should have been part of their case in chief, and I oppose any further evidentiary hearing.

. . . .

THE COURT: The question will be whether there's any hard and fast principle — I guess principles by definition are never hard and fast. Whether there's any principle held before us by the United States Supreme Court whose own sophistication in this matter is growing, this nonretrogression principle.

On the other hand, it seems to me, in my newly growing understanding of this area, that when we speak of majority-minority area in which minority citizens have an opportunity to be represented with respect to the various concerns that are variously special to individuals among them, because I think it boils down to a realization, with which I think we will all agree, that the African-American citizens do not and are not envisioned by the Supreme Court to function in any monolithic fashion; that like all of our constituent groups in the United States, that there are a whole range of expressions that may be represented by a whole range of candidates.

I'm very interested in reading and reviewing this viewpoint by the Supreme Court. My present understanding is that it is not binding as a rule. The no-dilution rule does not always operate like a ratchet, that must always ratchet up.

MR. HARVEY: Absolutely not. There are many factors Your Honor must balance. But I think Your Honor will have to be addressing, among other things, the evidence which did come in from Mr. Packman for what it was worth, that with the deduction of Peter Hearn as a candidate in the democratic multi-candidate race, primary race for mayor, I believe I brought out, that if you assume that Peter Hearn were not a candidate and you assume that Rendell might have gotten his notes, you then had a situation in which the proposed second district under Mr.

Packman's plan would have been carried by a white candidate for that office. That's a fact.

THE COURT: I think we are getting far afield here.

. . . .

Let's deal with the matter at hand.

I really don't think much would be afforded. It is true this Court, being unique among the courts in the nation by the very fact you have an appellate court that frequently conducts original jurisdiction trials, we are familiar with the taking of evidence by telephone in various state agencies in which sworn evidence is taken by telephone. I at times have testified as a witness in those. So it's quite achievable.

But I think Mr. Harvey's position is well taken, that the receiving of this evidence is not only questionably appropriate but unnecessary. I'm going to decline to allow the rebuttal proposed by Mr. Packman.

PLAN COMPARISON BASED ON DATA IN THE RECORD BEFORE THE MASTER

	Plaintiff Proposed Plan 1	Plaintiff Proposed Plan 2	O'Donnell Plan A	O'Donnell Plan B	Murtha/ McDade Plan	Loeper Original	Loeper Amended
Average Deviation (%)	.03999	.0024	.002665	.0027	unknown[1]	.032445	.0005143
Maximum Range of Deviation (%)	.189292	.0111	.011488	.0083	unknown[1]	.13344	.00954
Municipalities Split (Includes Counties)	1 City 16 County	8 Cities 18 Counties	8 Local 23 County	8 Local 17 County	27 Local 21 Counties	10 Local[2] 22 County	23 Local[2] 22 County
Election Precincts Split	1 (involves no population)	3 (1 split involves no population)	0	0	30 (admitted in brief)	1 (involves no population)	1 (involves no population)
Balance of Districts, by Dominant Party Voter Registration	12 Democrat 9 Republican	13 Democrat 8 Republican	12 Democrat 9 Republican	13 Democrat 8 Republican	unknown[1] unknown[1]	11 Democrat 10 Republican	11 Democrat 10 Republican
Percentage in Proposed Congressional District 1							
(1) African-American Population	(1) 52.356	(1) 52.356	(1) 39.249	(1) 36.570	(1) 41.658	(1) 46.686	(1) 49.048
(2) African-American Voting Population	(2) 49.716	(2) 49.716	(2) 36.1375	(2) 33.6288	(2) 38.011	(2) 43.359	(2) 45.915
Percentage in Proposed Congressional District 2							
(1) African-American Population	(1) 62.242	(1) 62.242	(1) 67.733	(1) 68.762	(1) 69.585	(1) 68.055	(1) 65.857
(2) African-American Voting Population	(2) 58.353	(2) 58.353	(2) 64.3166	(2) 65.3072	(2) 66.617	(2) 64.738	(2) 62.447
Percentage in Proposed Congressional District 3							
(1) African-American Population	(1) 4.859	(1) 4.859	(1) 13.017	(1) 14.639	(1) 8.834	(1) 4.469	(1) 4.334
(2) African-American Voting Population	(2) 4.510	(2) 4.510	(2) 12.2326	(2) 13.70088	(2) 8.348	(2) 4.221	(2) 4.090

[1] The calculations for the Murtha/McDade Plan are unknown due to the nature of the data they utilized in creating the plan.

[2] Includes one with zero (0) population involved.

	Plaintiff Proposed Plan 1	Plaintiff Proposed Plan 2	O'Donnell Plan A	O'Donnell Plan B	Murtha/ McDade Plan	Loeper Original	Loeper Amended
Percentage in Proposed Congressional District 14 (1) African-American Population (2) African-American Voting Population	(1) 17.78	(1) 17.81	(1) 19.14	(1) 17.19	(1) 17.3	(1) 22.44	(1) 22.31
Effect on Current 6th District (Yatron, retiring)	Remains largely intact	Remains largely intact	Subsumed by 5th, 15th, 16th and 17th	Remains largely intact	Divided among bordering districts	Divided among bordering districts	Divided among bordering districts
Effect on Current 20th District (Gaydos, retiring)	Split among 3 districts: 20th, which has moved south, 18th and 4th	Split among 3 districts: 20th, which has moved south, 18th and 4th	Subsumed by 18th	Subsumed by 18th	Subsumed largely by 18th	Recreated as open seat dominated by Westmore-land County	Recreated as open seat dominated by Westmore-land County
Districts currently held by Republican being combined with other district	Combining 5th and 7th	Combining 5th and 7th	None	4 Incumbent Republicans Districts Combined: 23rd with 21st; and 5th with 7th	Instructed: "Absolutely, if possible, not to throw any current incumbents into a district where they were facing another incumbent." (Vol. 2-A at 12)	None	None
Districts currently held by Democrat being combined with other district	Just 20th (combine with new 20th, 18th and 14th)	Just 20th (combine with new 20th, 18th and 14th)	Not other than retiring Congressmen	Not other than retiring Congressmen	See above block for instructions regarding incumbents	Combines 4th with 22nd	Combines 4th with 22nd

IN THE SUPREME COURT OF PENNSYLVANIA
BEFORE THE HONORABLE DAVID W. CRAIG, MASTER

ROBERT J. MELLOW, et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	No. 7 M.D. 1992
	:	
BRENDA K. MITCHELL, et al.,	:	
	:	
Defendants.	:	

ANSWER AND NEW MATTER OF INTERVENORS, LOEPER, ET AL.

NOW COME Intervenors, Loeper, et al., by their attorneys, and respond to Plaintiffs' Complaint as follows:

. . . .

NEW MATTER

20. Any redistricting plan, to meet the requirements of the federal constitution, must comply with the requirements of 42 U.S.C. §1973, as interpreted by the federal courts.

21. Plaintiffs' Complaint does not raise the voting rights issue; nor was the issue fully considered on the record before the Master, although it was raised by Intervenors.

22. A full and fair hearing to adopt a constitutional congressional redistricting plan requires full and fair consideration of all plans tendered to the Court.

23. The Special Master did not provide a full and fair hearing to all plans tendered to the Court, including Intervenors' Amended Plan.

IN THE SUPREME COURT OF PENNSYLVANIA

ROBERT J. MELLOW, Senator, 22nd District, et al.,	:	
	:	No. 7 M.D. Misc. 92
Plaintiffs,	:	
v.	:	
BRENDA K. MITCHELL, Acting Secretary of the Commonwealth et al.,	:	
Defendants.	:	

EXCEPTIONS OF INTERVENORS LOEPER, JUBELIRER, FISHER, LEMMOND, SALVATORE AND WENGER TO THE REPORT AND RECOMMENDATION OF THE MASTER

Intervenors F. Joseph Loeper, Robert C. Jubelirer, D. Michael Fisher, Charles Lemmond, Hank Salvatore and Noah Wenger, by their attorneys, hereby file the following exceptions to the findings, recommended decision and form of order of this Court's Master, Honorable David W. Craig, filed on February 24, 1991:

1. The Master erred in enforcing an arbitrary deadline for submission of redistricting plans, which prevented the submission,

amendment, correction of errors and refinement of plans to safeguard the public interest and constitutional and statutory rights.

2. Finding of Fact 15 is in error insofar as it characterizes the proceedings involving the amended version of the Loeper Plan:

a. At the commencement of the evidentiary hearing, before taking any evidence, the Commonwealth Court (per President Judge David W. Craig) accepted the amended version of the Loeper Plan (referred to in Finding of Fact 15 as "Loeper Plan 2"). The record shows that counsel for the Loeper Intervenors stated:

> Your Honor we did file a plan that was the plan passed by the State Senate. We have brought with us this morning a corrected plan and map that we would like to offer to the Court for its consideration. (Transcript, Vol. I, at 17)

. . .

THE COURT: Okay. Frankly, this would be the only exception I would make. Again recognizing that there is a party or partisan aspect of this, I just want to make sure all viewpoints are represented.... (Transcript, Vol. I, at 18)

. . .

The record also shows that, immediately following the Court's acceptance of Loeper Plan 2 for consideration, counsel for the O'Donnell Intervenors objected and was overruled:

THE COURT: I am being very liberal on this. Go ahead.

MR. MOORE: Just for the record, we would object.

THE COURT: I will overrule that objection. (Transcript, Vol. I, at 19)

Accordingly, Finding of Fact 15 is erroneous when it states that the Court "deferred ruling on its admission for consideration as a statewide plan." (Emphasis in original.)

b. At the conclusion of evidence on proposed statewide plans, President Judge Craig (by then acting as Master) reversed his earlier ruling and stated as follows:

THE COURT: The Loeper parties have not withdrawn the original plan. It is still before us. I rule that the amended plan is not allowable for consideration as a plan. I admit the exhibits for the sole purpose of showing the deficiencies in the Loeper original plan. (Transcript, Vol. I, at 141)

Finding of Fact 15 contradicts the record insofar as it states that Loeper Plan 2 was rejected by the Master "because it had not been timely filed by February 11." (Emphasis in original.) The record shows that the Court viewed the basis for rejecting it as the purported failure of the Loeper parties to withdraw Loeper Plan 1. Additionally, Finding of Fact 15 is erroneous in its characterization of the purpose for which the Loeper Plan 2 exhibits were admitted. The record shows that the Master allowed their admission solely for the purpose of showing the deficiencies in Loeper Plan 1. Findings of Fact that are unsupported by the evidence must be reversed or vacated. See Marrazzo v. Scranton Nehi Bottling Co., 422 Pa. 518, 525, 223 A.2d 17, 21 (1966) ("It is horn book law that the fact finder, whether it be a jury or the court, may not be

permitted to reach its verdict or decision merely on the basis of guess or conjecture, but that there must be evidence, direct or circumstantial, upon which logically its conclusion may be based.").

3. The Master erred in excluding the amended Loeper Plan from consideration as a statewide plan. After having allowed the Loeper Intervenors to proceed on the basis of an amendment to their original plan, it was an abuse of discretion for the Master subsequently to refuse to accept the amended plan for consideration. The Master's stated reason for refusing to consider the plan, i.e., that the "Loeper parties have not withdrawn the original plan" is illogical. Since the record shows that counsel for the Loeper Intervenors asked for and received permission to amend the Loeper original plan, the Loeper original plan was no longer before the Court at the close of the hearing. A plan that is amended is no longer the same plan. Furthermore, the Loeper Intervenors were prejudiced by the Master's subsequent ruling: in reliance on his initial ruling allowing consideration of an amended plan, they proceeded to make a record on the amended plan. Such prejudice, because of reliance on a court's ruling, constitutes grounds for reversal. See Mapp v. Dube, 330 Pa. Superior Ct. 284, 479 A.2d 553 (1984) (evidentiary error, whether of omission or admission, if it could have affected the result, is prejudicial and grounds for a new trial). Most importantly, however, this case concerns federal constitutional rights arising under Article I Section 2 of the United States Constitution and under the Fourteenth Amendment to the Constitution and federal law implementing rights established under the Fourteenth Amendment. Because the Court's decision affects the voting rights of all Pennsylvanians and the Court is free to construct a new plan if necessary to meet constitutional and statutory requirements, the Court has a duty to consider every plan that was presented to it, especially when evidence was heard on such a plan and all parties had the opportunity to cross-examine with respect to that plan. See e.g., Carstens v. Lamm, 543 F. Supp. 68 (D. Colo. 1982) (court considered 22 submitted plans in adopting one which met

constitutional requirements of one man, one vote and protected minority voting rights).

. . . .

5. The Master's Report fails to make adequate findings regarding the protection of minority voting rights from dilution. The discussion in the Master's Report (pp. 22-26) recognizes that all the statewide plans accepted for consideration proposed to reduce the African-American population in Philadelphia's 2nd Congressional District from its present 81 percent to a substantially lower percentage. The Master's recommended plan, Plaintiff's Plan 2, reduces the African-American population in the 2nd District to 62 percent. Other plans are either higher or lower for the 2nd Congressional District, but all are lower than the current percentage African-American population. When considering a plan that intentionally reduces minority population below the benchmark of 65% in a majority-minority Congressional district, the Court has a duty to make an inquiry on the record to assure itself that the reduction is harmless to their interests. See Martin v. Mabus, 700 F. Supp. 327 (SD Miss. 1988) (Court adopted a plan that had a 60% majority-minority judicial district because evidence in record that basically the same district in other elections had elected minority candidates show that the 65% presumed necessary for such a district was not necessary). A court would do so in many cases that do not involve constitutional rights. In class action litigation, for example, the Court will inquire into the fairness and justice of a proposed compromise, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, before approving an agreement. See Watson v. Ray, 90 F.R.D. 143, 146 (S.D.Iowa 1981) (When settlement in class suit is under consideration, this rule requires court to act as fiduciary preserving and guarding right of absent class members; court cannot assume passive rule when issue of settlement of class action is before it). In this case, involving constitutional rights, it is essential that such an inquiry be made before the Court approves a plan that dilutes minority rights when they are to be reduced below the classic super-majority of 65 percent African-American population that has been widely accepted

and endorsed. See Ketchum v. Burns, 740 F.2d 1398 (7th Cir. 1984), cert. denied 471 U.S. 1135. The Mellow Plaintiffs, who were the proponents of reducing the African-American population of the 2nd Congressional District to 62 percent, had the burden of demonstrating that their plan was not intended to, and would not have the effect of, impairing minority voting. They did not meet that burden. Their evidence consisted solely of a page in Plaintiff's Exhibit 2 that compared four different municipal elections in Philadelphia. This data was not authenticated by the Plaintiffs. In cross-examination it was shown that Plaintiffs' witness did not know who provided the handwritten voting summaries that were the basis for this exhibit. (R. 1, pp. 86 and 87) The witness also admitted in cross-examination that there were differences in voting patterns between municipal election years, used in his reported data, and Congressional election years. (R. 1, p. 90) Counsel for Loeper Intervenors made a timely objection to the admission of this evidence (R. 1, pp. 193-194), which objection was overruled by the Court. This evidence has no probative value and cannot be used to support any conclusions regarding the impact of Plaintiffs' Plan No. 2 on the dilution of minority population in Congressional District No. 2. It was error for the Master to admit the document, but, even as admitted, it has no probative value.

6. The Master erred in failing to make findings regarding the dilution in minority population that would be effected in Allegheny County by all statewide plans accepted for his consideration. The record shows that the present African-American population in Pittsburgh's 14th Congressional District is 23 percent: Loeper Exhibit 12, which shows minority statistics for all existing Congressional districts, was accepted by all parties and used by the parties and the Court during the proceedings. The plan recommended by the Master will reduce the African-American population in the 14th District to 17.81 percent. All other plans, except the Loeper plans, similarly reduced minority population in the 14th District below 20 percent. See Brief for Intervenors Loeper et al., Exhibit C. Yet the Master made no findings that these reductions would be harmless to minority voters in Allegheny

County. For non-majority/minority districts this is error that must be corrected. See Armor v. Ohio, 773 F. Supp. 1044 (1991). Unfortunately, the record is closed and there is no basis in the expedited and truncated proceedings before the Master to make appropriate findings with respect to other plans, although the Loeper plans were demonstrated to have been drawn with the express purpose of adding minorities to protect to the extent practicable the present level of minority population in the 14th Congressional District.

7. The Master erred in the legal standard he applied to the selection of a plan. The standard articulated by the Master in his report is an arguably appropriate standard by which a court would review a legislatively enacted reapportionment plan. As set forth in the Brief for Intervenors' Loeper, et al., it is an inappropriate standard when a court is choosing between plans or drawing its own plan. In the latter situation, which prevails in the instant case, the Master should have chosen a plan that approached equality of population as nearly as practicable while also protecting constitutional and statutory voting rights. The Master's report engages in a wide-ranging balancing of many factors that is inappropriate for the judicial process. It should not be accepted for this reason.

8. Plaintiffs' Plan 2, recommended by the Master, has an unacceptably high deviation from equal population. The maximum deviation found by the court for this plan is .0111% (although the true deviation is different, as shown in Exception 9, below). In contrast, O'Donnell Plan B has a maximum deviation of .0083% and the Loeper Amended Plan has a maximum deviation of .00954%. (Loeper Plan II has an average deviation of .0005143% while O'Donnell Plan B has an average deviation of .0027%). Applying the proper standard that a court should use when adopting or approving its own plan, Plaintiffs' Plan II must be rejected since its deviation from the "ideal" population is plainly not as low as practicable.

9. The Master erred in accepting Plaintiff's Plan 2 since such plan contains reported district populations totalling 11,881,677 which is 34 more people than officially reported by the Census Bureau for the Commonwealth. As a result, the Master has relied on maximum deviation and average deviations for the chosen plan which are erroneous. Furthermore, acceptance of Plaintiff's Plan 2 is error in that such plan is not contiguous in the recommended 16th Congressional District because a populated portion of Birmingham Township, Chester County is separated from the balance of the 16th District by a portion of its recommended 7th District.

10. The Master's Report errs in recommending a plan for Allegheny County that produces a result contrary to the Report's own Findings of Fact 27 and 29. The recommended plan violates the communities of interest described by the Master by unnecessarily extending an appendage from the proposed 18th District into the South Hills of Allegheny County, thus dividing the South Hills into three districts. The recommended plan intentionally gerrymanders the County to defeat an incumbent of the opposite party from the plan's proponents, with the collateral effect of diluting minority voting influence in the 14th District.

. . . .

12. The Master erred in not recommending the adoption of the Loeper Amended Plan. For reasons stated above, the Loeper Amended Plan should have been accepted for consideration by the Master. This Court should still consider it. It has superior maximum deviation in population to all plans except O'Donnell Plan B but is superior to all plans (including O'Donnell Plan B) in average deviation. See Court Exhibit AA and Brief of Intervenors Loeper, et al., page 14, for tabulation of deviations. The Loeper Amended Plan is also superior to all other plans in protecting and enhancing minority voting interests. It is most protective of the minority voting population of the Fourteenth District, protects a classic super-majority in Philadelphia's Second Congressional

District and creates a strong minority influence in Philadelphia's First Congressional District with a combined African-American and Hispanic population of over 60%. (In contrast, O'Donnell Plan B manipulates minority populations in Philadelphia and in Allegheny County adversely to minority interests. Plaintiffs' Plan 2 does the same in Allegheny County.)

SUBJECT: REVISED FINAL MEMO
Required Information--EACH Plan of Party Responding Here

TO: Counsel

FROM: President Judge David W. Craig

1. HB or SB, if any, embodying plan(s)--Add specific Printer's No. for each plan.

Amendment A0539 to SB 205 2/11/92
Defeated 73-122 with bipartisan support & bipartisan opposition

2. Maximum range of deviation, in percentage.

.0000265 (+9 persons high; -6 persons low)

3. Average deviation, in percentage.

.0000025 (14 districts zero deviation)

4. Number of municipalities (including counties) split.

97 (30 counties; 67 municipalities)

5. Number of election precincts split.

50 (20 in Phila.; 30 in Allegheny)

6. Estimated political party balance of Pennsylvania congressional delegation, in number of seats.

11 Democrat 10 Republican
(based on voter registration of districts)

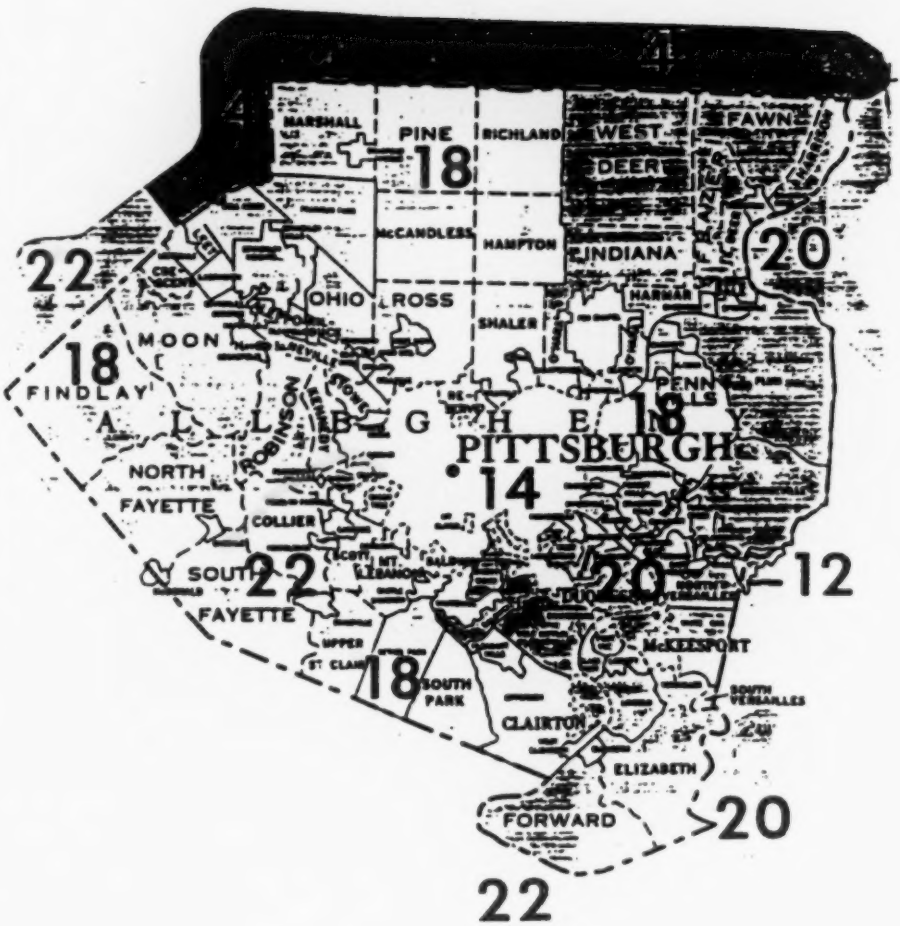
7. Percentage of (1) African-American population, and (2) African-American voting age population, in each Philadelphia congressional district proposed.

(1)	*Dist. 1*	*.475*	*(2)*	*Dist. 1*	*.442*
	2	*.666*		*2*	*.634*
	3	*.0384*		*3*	*.036*

Note: Percentages shall be to at least three points to right of decimal point, e.g., .XXX.

/s/ Joseph W. Murphy

Counsel for Ryan



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